

Director's Protest Resolution Report

**Boardman to Hemingway
Transmission Line Project
Final Environmental Impact
Statement and Land Use
Plan Amendments
(FEIS/LUPAs)**

November 17, 2017



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Reader's Guide

How do I read the Report?

The Director's Protest Resolution Report is divided into sections, each with a topic heading, excerpts from individual protest letters, a summary statement (as necessary), and the Bureau of Land Management's (BLM) response to the summary statement.

Report Snapshot

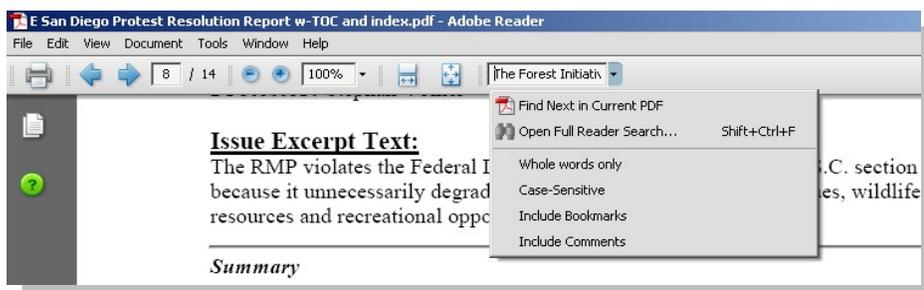
The diagram shows a report snapshot with the following sections and callouts:

- Topic heading:** *Issue Topics and Responses*
- Submission number:** NEPA
- Issue Number:** PP-OR-B2H-16-02-10 (highlighted with a red box)
- Protest issue number:** (empty box)
- Organization:** The Forest Initiative
- Protesting organization:** (empty box)
- Protester:** John Smith
- Protester's name:** (empty box)
- Issue Excerpt Text::** Rather than analyze these potential impacts, as required by NEPA, the BLM postpones analysis of renewable energy development projects to a future case-by-case analysis. (Callout: Direct quote taken from the submission)
- Summary:** The BLM inadequately analyzes NEPA for renewable energy projects in the PRMP/FEIS. (Callout: General statement summarizing the issue excerpts (optional).)
- Response:** BLM's response to the summary statement or issue excerpt if there is no summary. (Callout: BLM's response to the summary statement or issue excerpt if there is no summary.)

Specific renewable energy projects are implementation-level decisions rather than RMP-level decisions. Upon receipt of an application for a renewable energy project, the BLM would require a site-specific NEPA analysis of the proposal before actions could be approved (FEIS Section 2.5.2, p. 2-137). Project specific impacts would be analyzed at that time (including impacts to surrounding properties), along with the identification of possible alternatives and mitigation measures.

How do I find my Protest Issues and Responses?

1. Find your submission number on the protesting party index which is organized in the order protest letters were received by the BLM.
2. In Adobe Reader search the report for your name, organization or submission number (do not include the protest issue number). Key word or topic searches may also be useful.



List of Most Commonly Used Acronyms

ACEC	Area of Critical Environmental Concern	IB	Information Bulletin
BA	Biological Assessment	IM	Instruction Memorandum
BLM	Bureau of Land Management	KOP	Key Observation Points
BMP	Best Management Practice	LRMP	Land and Resource Management Plan
BO	Biological Opinion	MOU	Memorandum of Understanding
CAA	Clean Air Act	NEPA	National Environmental Policy Act of 1969
CEQ	Council on Environmental Quality	NOA	Notice of Availability
CFR	Code of Federal Regulations	NOI	Notice of Intent
COA	Condition of Approval	NRHP	National Register of Historic Places
CSP	Concentrated Solar Power	NTT	National Technical Team
CSU	Controlled Surface Use	OHV	Off-Highway Vehicle (has also been referred to as ORV, Off Road Vehicles)
CWA	Clean Water Act	ORV	Outstandingly Remarkable Value
DEIS	Draft Environmental Impact Statement	PA	Preliminary Assessment
DM	Departmental Manual (Department of the Interior)	PPA	Power Purchase Agreement
DOI	Department of the Interior	RFDS	Reasonably Foreseeable Development Scenario
EA	Environmental Assessment	RMP	Resource Management Plan
EIS	Environmental Impact Statement	ROD	Record of Decision
EO	Executive Order	ROW	Right-of-Way
EPA	Environmental Protection Agency	SO	State Office (BLM)
ESA	Endangered Species Act	T&E	Threatened and Endangered
FEIS	Final Environmental Impact Statement	USC	United States Code
FEIS	Final Environmental Impact Statement	USGS	U.S. Geological Survey
FLPMA	Federal Land Policy and Management Act of 1976	WA	Wilderness Area
FO	Field Office (BLM)	WSA	Wilderness Study Area
FWS	U.S. Fish and Wildlife Service	WSR	Wild and Scenic River(s)
GIS	Geographic Information Systems		
HRV	Historic Range of Variability		

Protesting Party Index

Protester	Organization	Submission Number	Determination
Gail Carbiener	Individual	PP-OR-B2H-16-01	Denied – Issues/Comments
William Symms	Oregon-California Trails Association	PP-OR-B2H-16-02	Denied – Issues/Comments
Charles Gillis	Individual	PP-OR-B2H-16-03	Denied – Issues/Comments
Raymond and Lynn Randall	Individuals	PP-OR-B2H-16-04	No Standing
Christopher and Marie Lyon	Individuals	PP-OR-B2H-16-05	Dismissed – Comments/Opinion Only
Mary McCracken	Individual	PP-OR-B2H-16-07	Dismissed – Comments/Opinion Only
David and Karen Yeakley	Individuals	PP-OR-B2H-16-08	Denied – Issues/Comments
Roger P. Blair	Individual (former President of Oregon-California Trails Association)	PP-OR-B2H-16-09	Dismissed – Comments/Opinion Only
Maxine Hines	Individual	PP-OR-B2H-16-10	Dismissed – Comments/Opinion Only
Constance Olmos	Individual	PP-OR-B2H-16-11	No Standing
Kathryn Morello / Tova Woyciechowicz	Individuals (Landowners)	PP-OR-B2H-16-12	No Standing
Meg Cooke	Individual	PP-OR-B2H-16-13	No Standing
Irwin Smutz	Individual	PP-OR-B2H-16-14	No Standing
David Komlosi	Individual	PP-OR-B2H-16-16	No Standing
Susan Geer	Individual	PP-OR-B2H-16-17	No Standing
Jennifer Moore	Individual	PP-OR-B2H-16-18	No Standing
Susan Geer	Individual	PP-OR-B2H-16-19	No Standing
Jill Wyatt	Individual	PP-OR-B2H-16-20	Denied – Issues/Comments

Kelly Skovlin	Individual	PP-OR-B2H-16-21	No Standing
James M. Oliver	Individual	PP-OR-B2H-16-22	No Standing
Melissa Over	Individual	PP-OR-B2H-16-23	No Standing
Timo Macke	Individual	PP-OR-B2H-16-24	No Standing
April Curtis	Individual	PP-OR-B2H-16-25	No Standing
Mary Cooke	Individual	PP-OR-B2H-16-26	No Standing
<i>Unreadable name</i>	Individual	PP-OR-B2H-16-27	No standing
Sam Myers	Individual	PP-OR-B2H-16-28	No Standing
Meg Cooke	Individual	PP-OR-B2H-16-29	No Standing
Cathy Webb	Individual	PP-OR-B2H-16-30	No Standing
Donald McAllister	Individual	PP-OR-B2H-16-31	No Standing
Lois Barry	Individual	PP-OR-B2H-16-32	Denied – Issues/Comments
Kathy Andrew	Individual	PP-OR-B2H-16-33	No Standing
Colin Andrew	Individual	PP-OR-B2H-16-34	No Standing
Jason Rosvold	Individual	PP-OR-B2H-16-35	No Standing
Jim Kreider / C. Fuji Kreider	Individuals	PP-OR-B2H-16-36	Dismissed – Comments/Opinion Only
<i>Unreadable name</i>	Individual	PP-OR-B2H-16-37	No Standing
Katie Fite	Wildlands Defense	PP-OR-B2H-16-40	Denied – Issues/Comments
John Mellgren	On behalf of: Gail Carbiener and William Symms (Oregon-California Trails Association)	PP-OR-B2H-16-41	Denied – Issues/Comments
Bill Harvey / Tim Kerns / Mark Bennett	Baker County Commissioners	PP-OR-B2H-16-42	Denied – Issues/Comments
Dan Turley	Glass Hill Coalition	PP-OR-B2H-16-43	Denied – Issues/Comments
Dr. Karen Antell	Eastern Oregon University	PP-OR-B2H-16-44	Dismissed – Comments/Opinion Only
Dan Morse	Oregon Natural Desert Association obo: Oregon Wild /	PP-OR-B2H-16-45	Denied – Issues/Comments

	Hells Cyn Preservation Council / Gail Carbiener / Stop B2H Coalition		
Karimah Schoenhut	Defenders of Wildlife	PP-OR-B2H-16-46	Denied – Issues/Comments
Jack Howard / Steve McClure	Union County Commissioners	PP-OR-B2H-16-47	Dismissed – Comments/Opinion Only
Brock Evans	Endangered Species Coalition	PP-OR-B2H-16-48	No Standing
Sam Myers	Individual/Landowner	PP-OR-B2H-16-49	No Standing
John Luciani	Individual	PP-OR-B2H-16-50	Dismissed – Comments/Opinion Only
Mary E. Miller	Individual	PP-OR-B2H-16-51	Dismissed – Comments/Opinion Only
Peter Barry	Individual	PP-OR-B2H-16-52	Dismissed – Comments/Opinion Only
Brad and June Allen	Elk Song Ranch	PP-OR-B2H-16-53	Denied – Issues/Comments
Joann Marlette	Individual	PP-OR-B2H-16-54	Dismissed – Comments/Opinion Only
Eric Quaempts	CTUIR (Tribal) DNR	PP-OR-B2H-16-55	Denied – Issues/Comments
Whit Deschner	Individual	PP-OR-B2H-16-56	Denied – Issues/Comments
Irene Gilbert	Individual	PP-OR-B2H-16-57	Denied – Issues/Comments

Issue Topics and Responses

NEPA – Public Participation

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-03
Organization: Individual
Protester: Charles Gillis

Issue Excerpt Text:

It is a violation of due process guaranteed by the 5th and 14th amendments to the U.S. Constitution to offer, what is in reality, less than 30 days to analyze and produce meaningful criticism of a 3,000 plus page document.

Issuing the FEIS between the Thanksgiving and Christmas holidays emasculates any meaningful opportunity for concerned citizens to produce meaningful criticism.

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-20
Organization: Individual
Protester: Jill Wyatt

Issue Excerpt Text:

During the period December 2014 through November 2016, confusing information on a myriad of preferred alternate routes with variations was periodically available; however, potentially impacted individual landowners were not notified unless they specifically had requested information.

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-20
Organization: Individual
Protester: Jill Wyatt

Issue Excerpt Text:

The dates of the FEIS Protest period [...] are inadequate to allow meaningful analysis and

response to a 3,000 page document.

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-32
Organization: Individual
Protester: Lois Barry

Issue Excerpt Text:

[L]andowners who may be directly affected by the transmission line crossing their property. Some landowners remain unaware that a portion of the line may cross their property.

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-40
Organization: Wildlands Defense
Protester: Katie Fite

Issue Excerpt Text:

Bonneville Power Administration's need is to use this EIS to help support any decision concerning its need to participate in ownership of the proposed B2H Project to continue serving its customers in southeastern Idaho. In evaluating the need for action, EPA will consider the following purposes: maintain its transmission system reliability and performance; meet its contractual and statutory obligations; minimize impacts on the environment; and minimize costs while meeting its power and transmission service needs. S-7.

Why hasn't the public been presented with any BPA analysis for full comment in a SEIS? This appears to be yet another evasion of NEPA by having any BPA assessment of need take place after all public comment and protest periods are closed. Why was this FEIS, full of incomplete or uncertain Appendix plans,

released when it was -at the very end of an outgoing administration, and with a brief Protest period over the most major holidays of the year? This demonstrates great disregard by the proponent and BLM for full and fair public processes.

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-40
Organization: Wildlands Defense
Protester: Katie Fite

Issue Excerpt Text:

It is difficult to determine what has been changed, as the EIS and its mapping are often very confusing. Changes in routes are last minute, and there was no public comment period. The FEIS was released during late fall-winter when travel to review the changed routes is very difficult, further hampering public understanding and site-based input. We Protest this unfair process that undermines NEPA and a fair public process.

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-45
Organization: Oregon Natural Desert Association
Protester: Dan Morse, et. al.

Issue Excerpt Text:

The process by which BLM prepared and issued the DEIS and FEIS did not satisfy the letter and spirit of NEPA because BLM did not in all instances provide a meaningful opportunity for affected citizens to participate.

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-53
Organization: Elk Song Ranch
Protester: Brad and June Allen

Issue Excerpt Text:

The BLM Notice of Availability published in the Federal Register on November 28, 2016 states that protests must be filed “within 30 days of the date that the EPA published the NOA in the Federal Register. The BLM

notice includes a confusing error in the “Addresses” section that might result in a person sending their protest to the incorrect address. The “Dear Reader” letter also states that protests must be filed “within 30 days of the date that the EPA published the NOA in the Federal Register”, but directs protests to an incorrect mailing address for the BLM Protest Coordinator.

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-53
Organization: Elk Song Ranch
Protester: Brad and June Allen

Issue Excerpt Text:

The agency improperly expanded the scoping process without adequate public notification by deciding during the public meetings held in 2010 for the second NOI that the agency would incorporate all comments received by the applicant during its “Community Advisory Process” as NEPA scoping comments.

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-53
Organization: Elk Song Ranch
Protester: Brad and June Allen

Issue Excerpt Text:

The public could not meaningfully participate in the scoping process when not only were they not aware that their CAP comments could become part of scoping, but were actively discouraged by the lead agency, the applicant, and the cooperating agencies from thinking that the community advisory process was part of the agency’s NEPA process.

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-53
Organization: Elk Song Ranch
Protester: Brad and June Allen

Issue Excerpt Text:

Nowhere in the FEIS have we been able to find where the agency discussed our “responsible and reasonable opposing view,”⁹

including in its response to comments. In fact, despite statements in the responses to comments to the contrary, the agency often revised nothing in the document related to comments, or, as discussed previously, made it impossible to find where the comment is addressed.

For example, the BLM responded that it had “incorporated” the information submitted by the Elk Song Ranch (B10a) from the Confederated Tribes of the Umatilla Indian Reservation and that we should “see Section 3.2.5.” Section 3.2.5 is 140 pages long and has no revision bars. The information we submitted documented (by a qualified Tribal biologist) the presence of special status fish species in the many drainages that would be affected by the agency’s preferred route. The CTUIR letter is not listed in Section 6 as a reference, nor can we determine where in Section 3.2.5 the information was “incorporated” and I sure can’t find where it was considered.

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-55
Organization: CTUIR
Protester: Eric Quaempts

Issue Excerpt Text:

Combined with a review period immediately between Thanksgiving and Christmas furthers the impression that the BLM wanted to limit public participation in this process. The National Environmental Policy Act documents also incorrectly indicated that the final date for submission of protests regarding this EIS were on December 26, 2016, a federal holiday, further frustrating public review of the document.

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-57
Organization: Individual
Protester: Irene Gilbert

Issue Excerpt Text:

I am protesting the failure of BLM to meet the obligation to include the citizens of Oregon who are not Idaho Power customers

in the development of the Environmental Impact Statement. This protest is based upon the following which establishes a pattern of denying Oregon citizens input opportunities as is required by NEPA:

- There was no indication when comments were open on the Draft EIS of the requirement to comment in order to participate in future actions.
- The public was told that there would be a comment period following the issuance of the final EIS which is not being provided.
- The limit on the protest period to 30 days to review a document that is thousands of pages long.
- Issuing the final EIS so that the protest period includes both the Thanksgiving and the Christmas holidays periods which even further limits the time to compile and submit information.
- Refusing to provide information regarding the proposed route prior to the issuance of the final EIS.
- Failing to notify people prior to the issuance of the final EIS that there would only be 30 days to respond.
- Including in the final EIS route changes that were never stated as being considered.

Summary:

The BLM violated NEPA by not providing adequate or meaningful opportunity for the public to comment on the EIS in the following ways:

- Not making public the preferred route before issuing the FEIS;
- Not informing the public that participating in that public comment period would be a requirement to have standing for submitting a protest;
- Members of the public believed there would be another comment period after the release of the FEIS, and the BLM did not provide such a period;
- Not informing the public of the length of the protest period before issuing the FEIS;
- Limiting the 30-day time period to submit protests, encompassing Thanksgiving and Christmas holidays;
- Failing to respond meaningfully to comments on the Draft EIS;
- Mischaracterizing the Community Advisory Process as not being a part of the agency's NEPA process; and
- Failing to include crucial information, such as the BPA analysis, for comment.

Response:*Preferred Alternative*

The CEQ regulations implementing NEPA direct the BLM to “identify... the agency’s preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference” (40 CFR 1502.14(e)). The BLM planning regulations also require the selection of a preferred alternative in the draft EIS and draft Resource Management Plan Amendments (RMPAs) (43 CFR 1610.4-7), which is applicable to the proposed plan amendments associated with the Boardman to Hemingway Transmission Line. The BLM identified the agency-preferred alternative in the draft EIS/RMPAs in section 2.5.7, beginning on page 2-71. On March 22, 2016, the BLM issued a news release identifying the agency’s preliminary preferred alternative to offer the public an advanced noticed of a potentially different agency-preferred alternative between the draft EIS/RMPAs and the Final EIS/RMPAs. The identification of the preliminary preferred alternative may change between the draft EIS/RMPAs and final EIS/RMPAs (BLM Handbook H-1790-1, p. 95). Here, the BLM changed the agency preferred alternative between the draft and final EIS/RMPAs and explained the basis for such change (see section 2.1.1.2 of the final EIS/RMPAs). These changes did not alter the proposed RMPAs. In short, the BLM’s change to the preferred route between the draft and final EIS/RMPAs is not a violation of NEPA, and the BLM took the additional step of providing the public with preliminary information on the potential change several months prior to publishing the final EIS/RMPAs, while cautioning that adjustments could still be made prior to FEIS publication.

Protest Procedures

The BLM’s protest procedures are established by regulation and allow any person who has participated in the planning process to protest the approval or amendment of a resource management plan (43 CFR 1610.5-2(a)). Participation in the planning process is not limited to submitting formal public comments on the draft. In terms of obligations the participation requirements, neither NEPA, the BLM’s planning regulations, nor BLM policy require the BLM

to notify the public of such requirements in order to later protest the approval or amendment of the plan.

The BLM's planning regulations require all protests to be filed within 30 days of the date the EPA publishes the notice of availability of the FEIS in the Federal Register (43 CFR 1610.5-2(a)(1)). The 30-day protest period is prescribed by regulation and cannot be extended. On November 25, 2016, the BLM made the document available on its website and at the Boise, Prineville, and Vale District Offices and at the Owyhee and Baker Field Offices, the same day that the EPA published the Notice of Availability in the Federal Register and notified the public of the 30-day protest period. Contrary to the protesters' comments, the BLM satisfied the requirements relating to the protest period for the Boardman to Hemingway FEIS/RMPAs.

Responses to Comments on DEIS

The BLM is required to assess, consider, and respond to all substantive comments received (40 CFR 1503.4). Substantive comments are those that reveal new information, missing information, or flawed analysis that would substantially change conclusions (BLM Handbook H-1601-1, p. 23-24).

In compliance with NEPA, the BLM considered all public comments submitted on the Draft EIS. The BLM complied with 40 CFR 1503.4 by performing a detailed comment analysis that assessed and considered all substantive comments received. Appendix K of the FEIS presents the BLM's responses to all substantive comments. The BLM provided a meaningful response to the substantive comments in each comment letter. The BLM's response identifies whether the BLM made any modifications to the alternatives, improvements to the impacts analysis, or factual corrections made as a result of public comment. The BLM's response also explains why certain public comments did not warrant further agency response. For example, comments reflecting a preference of alternatives were noted, but do not require an agency to make substantive changes in the FEIS. The comment response process ensures that every comment is considered at some point when preparing the FEIS and RMPAs.

The BLM adequately considered and responded to public comments on the FEIS and RMPAs.

Scoping

The NEPA regulations (40 CFR 1501.7) and the BLM planning regulations (43 CFR 1610.2 and 43 CFR 1610.4-1) require the BLM to provide a scoping process at the beginning of an agency review of a proposal in order to determine "the scope of issues to be addressed and for identifying the significant issues related to a proposed action." Contrary to the protester's comments, the BLM did not mischaracterize Idaho Power Company's (IPC) Community Advisory Process as being outside the NEPA scoping process. IPC initiated the Community Advisory Process separate from the NEPA process, and the BLM, at the request of the public, agreed to consider the Community Advisory Process comments as scoping comments and noted this decision in its 2011 Revised Scoping Report as well as both the Draft and Final EIS's of the RMPAs (see Revised Scoping Report, pp. 9-10, 16, and final EIS/RMPAs, p. 1-1). The BLM conducted its own additional and extensive scoping after the Community Advisory Process meetings had ended (Revised Scoping Report, pp. 9-10; FEIS/RMPAs, p. 1-15). The BLM did not violate NEPA by agreeing to consider the Community Advisory Process comments as scoping comments.

Bonneville Power Administration

Bonneville Power Administration is a cooperating agency that is using the FEIS to determine whether to participate in the Boardman to Hemingway Transmission Line project (see section 1.2.6 of the FEIS/RMPAs). While BPA is also a co-applicant with Idaho Power and PacifiCorp, the BLM's decision is independent of whether BPA chooses to participate in the project. Further, BPA's analysis regarding its possible participation in the project is not a protestable issue because it is implementation-level and not germane to the BLM's decision to grant or deny IPC's application for right-of-way.

Additional Public Comment Period

Contrary to the protester's comments, the BLM did not tell the public that a comment period would be provided for the FEIS. The 30-day protest period for a resource management plan or plan amendment is different than a public comment period; the protest period, described in 43 CFR 1610.5-2, is an opportunity for persons who have participated in the planning process and who would be adversely affected by the approval or amendment of a resource management plan to communicate to the BLM Director why they believe the State Director's decision is wrong. The public comment period is one of the ways in which the public may participate in the preparation of a resource management plan (see 43 CFR 1610.2; note that this and the previous citation refer to the BLM's previous regulations, which govern the Boardman to Hemingway planning effort). The CEQ's regulations implementing NEPA do not require a public comment period for a final EIS (see 40 CFR 1503.1(b) and BLM Handbook H-1790-1, Section 9.6) and no such comment period was provided for this final EIS.

NEPA – Purpose and Need

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-45
Organization: Oregon Natural Desert Association
Protester: Dan Morse, et. al.

Issue Excerpt Text:

BLM said, for example, that it “is not BLM’s role or responsibility to verify an applicant’s interests and objectives for a proposed project” (FEIS at K6-128). This is wrong as a matter of law. ... By (1) refusing to evaluate whether the applicant truly needs this project and (2) defining BLM’s *own* purpose and need narrowly as simply responding to the application, and refusing to respond to comments asking BLM to correct these errors, BLM violated NEPA.

Summary:

The FEIS/RMPAs violate NEPA because it did not evaluate the applicant’s need for the project. Further, it is a violation of NEPA for the BLM to claim that its own purpose and need is merely to respond to the right-of-way application.

Response:

The BLM has properly justified the agency’s purpose and need in the FEIS/RMPAs. The NEPA document “must briefly specify the underlying purpose and need to which the agency is responding,” (40 CFR 1502.13; BLM NEPA Handbook, H-1790-1, p. 35). The analysis of alternatives is guided by the agency’s purpose and need (*League of Wilderness Defenders, et al.*, IBLA 2012-190, *6, 2012 WL 6726358 (2012)). Agencies have considerable discretion to define the purpose and need of a project. *City of Angoon v. Hodel*, 803 F.2d 1016, 1021 (9th Cir. 1986); *Powder River Basin Resource Council*, 183 IBLA 242, 248 (2013); Handbook, p. 35. The BLM must choose purposes that are reasonable (*Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 196 (D.C. Cir. 1991)). Agencies, in determining a reasonable purpose, must look at the factors relevant to the definition of the purpose (*e.g.*, Congressional directives, statutory authority, the specific needs and goals of parties involved in the sanction of a specific plan). *Id.* (internal citations omitted). Importantly, NEPA does not require an agency to “objectively verifiable or supported by scientifically verifiable evidence” the purpose and need, nor does an agency have to prove in the EIS “that a project serves a particular purpose or that there exists a particular need for the project” (*Backcountry Against Dumps, et al.*, 179 IBLA 148, 165 (2010), citing *County of Bergen v. Dole*, 620 F. Supp. 1009, 1041-43, 1058-59 (D. N.J. 1985), *aff’d*, 800 F.2d 1130 (3rd Cir. 1986)); Handbook, p. 35. The

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-56
Organization: Individual
Protester: Whit Deschner

Issue Excerpt Text:

[N]ot being considered seriously by a Federal Agency lets the applicant assume that the a right-of-way will be granted, just a matter of where. Note that the BLM’s objectives are not the same as the applicant’s and acceptance of the application should not obligate the BLM to provide an approval.

BLM's action triggers the NEPA requirements and not an applicant's purpose and need (Handbook, p. 35).

The Applicant (Idaho Power Company) applied for a permit from the BLM to construct the power line across federal lands managed by the BLM (Boardman to Hemingway FEIS/RMPAs, p. 1-1). The BLM is not constructing the power line, but is responding to the request for a right of way across those federal lands. *Id.* at 1-7. On behalf of the Secretary of the Interior, the BLM is authorized by the Federal Land Policy and Management Act of 1976 (FLPMA) to grant a right-of-way on federal lands for the purposes of constructing power generation, transmission, and distribution systems. *Id.*; FLPMA § 501(a)(4); 43 C.F.R. Part 2800. It is this statutory authorization that dictates the BLM's purpose and need, not the Applicant's: "The purpose and need statement for an externally generated action must describe the BLM purpose and need, not an applicant's or external proponent's purpose and need," (40 CFR 1502.13; BLM NEPA Handbook, H-1790-1, p. 35). As noted above, the BLM is not required to independently verify the Applicant's reasons for their permit request, but instead to identify the *BLM's* purpose and need. The BLM appropriately identified the BLM's purpose and need in the NEPA document (Boardman to Hemingway FEIS/RMPAs, pp. 1-7 & 1-8). The BLM also addressed the purpose and need in response to public comments on the DEIS, which can be found in Appendix K of the FEIS generally, one place being Appendix K N4.

NEPA – Range of Alternatives

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-01

Organization: Individual

Protester: Gail Carbiener

Issue Excerpt Text:

The Final EIS has not considered burying the transmission line for a short distance in Baker Valley in front of the tourist viewing picture window.

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-08

Organization: Individuals

Protester: David & Karen Yeakley

Issue Excerpt Text:

Oregon has designated utility corridor thru central Oregon, [which is] not being considered.

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-40

Organization: Wildlands Defense

Protester: Katie Fite

Issue Excerpt Text:

The FEIS failed to consider a reasonable range of alternatives (including following existing corridors or the WWEC).

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-40

Organization: Wildlands Defense

Protester: Katie Fite

Issue Excerpt Text:

[The] BLM failed to provide a detailed environmental analysis and develop a range of reasonable alternatives that make comparisons between Centralized vs. De-centralized energy models possible. Home-based solar and local energy production and conservation must be factored into the analysis.

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-40

Organization: Wildlands Defense

Protester: Katie Fite

Issue Excerpt Text:

Energy alternatives that site any power generating/transmission facilities much closer to urban areas, that focus on private land development of “renewables”, and that focus on de-centralized energy and home or other solar/wind generation and conservation must be fully explored.

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-40

Organization: Wildlands Defense

Protester: Katie Fite

Issue Excerpt Text:

The FEIS states that criteria used to identify the Agency Preferred Alternative included:

- Maximize use of existing utility corridors/follow existing infrastructure
- Avoid or minimize impacts on resources, including Greater Sage-Grouse
- Minimize need/or plan amendments
- Avoid or minimize proximity to private residences
- Minimize use of private lands

Regrettably, over half of the 293 mile project is outside ANY other route/corridor. 24 miles is within a designated corridor, with only 90 miles co-located. Thus the agency preferred alternative, do not maximize use of existing utility corridors.

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-40
Organization: Wildlands Defense
Protester: Katie Fite

Issue Excerpt Text:
ANY new line here should have followed the Freeway to the maximum extent possible, or be bundled into existing utility corridor swaths.

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-41
Organization: Western Environmental Law Center
Protester: John Mellgren

Issue Excerpt Text:
The agencies also should have considered burying the B2H line in depth. Just because it is more expensive does not mean that it is impractical. Further, the agencies could have considered burying it in parts along the alternative routes. An example of this would be to utilize the I-84 corridor for a greater portion of the project's length, and then bury the line in areas where it might impact things such as airspace, or visual characteristics of cities. The agencies also could have considered burying the line in areas where the Project would have a negative visual impact on the Oregon Trail. The explanation for why burying the line would be impractical assumes that IPC would need to bury the line for the entire route. Burying the lines in portions of the route could also reduce or eliminate visual impacts to the Oregon Trail if used strategically. In particular, the BLM failed to adequately consider the visual impacts to the Oregon Trail. Burial of the line to the northwest of the BLM Oregon Trail Interpretive Center at Flagstaff Hill in eastern Oregon would have been a prudent choice preserving the historic significance of the Oregon Trail at this site.

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-42
Organization: Baker County Commission
Protester: Bill Harvey

Issue Excerpt Text:
Baker County is certain that the range of reasonable alternatives that are required to be evaluated under NEPA have not been fully investigated, and the amount of analysis and data produced for the Environmentally Preferred or Agency Preferred Alternative unduly weights the process toward one conclusion. We find this slant to be a fatal flaw in the document, as producing less data and information for alternatives other than the Agency or Environmentally Preferred results in inaccurately and incompletely disclosing the impact of all alternatives, impeding the Decision Maker from utilizing the balancing process intended by NEPA to determine the best alternative.

One alternative that Baker County finds was given minimal consideration is the No Action Alternative. As you know, due consideration of this alternative is required under NEPA.

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-56
Organization: Individual
Protester: Whit Deschner

Issue Excerpt Text:
The West-Wide corridor was foreseen and created to avoid the very arguments that continue to surface by proposing to run the power lines through Baker County. That, or there was/is the No-Action alternative which received minimal consideration (Reference 2-164). Due deliberation of this alternative is required under NEPA.

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-57
Organization: Individual
Protester: Irene Gilbert

Issue Excerpt Text:

BLM as the lead agency on the Environmental Impact Statement should have evaluated the impacts of using the designated corridor as opposed to developing an entirely new corridor

through Eastern Oregon due to the recommendations they received during the comment period on the Draft Environmental Impact Statement.

Summary:

The BLM violated NEPA by not considering a reasonable range of alternatives in the analysis for the Boardman to Hemingway Transmission Line Project. Specifically, the BLM did not:

- consider siting portions of an underground transmission line in visually scenic areas;
- analyze a route that exists entirely within approved existing corridors;
- minimally consider the “No Action” alternative; and
- consider de-centralized (home-based and local) energy vs. centralized energy.

Response:

When an agency prepares an EIS, NEPA requires rigorous exploration and objective evaluation of all reasonable alternatives, and for alternatives that are eliminated from detailed study, a brief discussion of the reasons for their having been eliminated (40 CFR 1502.14(a)). When there are potentially a very large number of alternatives, the BLM may only analyze a reasonable number to cover the full spectrum of alternatives (BLM Handbook H-1790-1, Section 6.6.1 (quoting CEQ, Forty Most Asked Questions Concerning CEQ’s NEPA Regulations at Question 1b (Mar. 23, 1981))). CEQ does not require that all reasonable alternatives have to be considered; rather, a reasonable range of alternatives should be considered.

The BLM developed, identified and analyzed a reasonable range of alternatives that meet the purpose and need of the Boardman to Hemingway FEIS/RMPAs and that address resource issues identified during the scoping period. In the FEIS/RMPAs, a total of 24 alternatives and 40 route variations were analyzed in detail (Section 2.5.2), including a number of local route-variation options recommended in comments on the DEIS (Section 2.1.1.3). The B2H Project area is organized into six segments based generally on similar geography, natural features, drainages, resources, and or land uses (Section 2.5.2). There are multiple routes in each segment. Section 2.5.2 provides a description of each alternative route, and localized route variations, if applicable, in each of the six segments.

The FEIS/RMPAs fully analyzed five alternatives, which are described in detail in Chapter 2. Chapter 3 provides descriptions of the existing condition of the potentially affected environment and environmental consequences for each resource by alternative route in each segment. The results of the analyses are characterized and summarized in Tables 2-19 through 2-36 at the end of Chapter 2. This Agency Preferred Alternative is described in Section 2.8 (page 2-201).

FEIS Section 2.5.4 describes the four alternatives and approximately five route variations considered but eliminated from detailed analysis, for the following reasons (Section 6.6.3 of the BLM NEPA Handbook H-1790-1):

- It is ineffective (it would not respond to BLM’s purpose and need).
- It is technically or economically infeasible.
- It is inconsistent with the basic policy objectives for the management of the area (such as not conforming to BLM’s RMPs or the USFS Land and Resource Management Plan).
- Its implementation is remote or speculative.
- It is substantially similar in design to an alternative that is analyzed.
- It would have substantially similar effects on an alternative that is analyzed.

The BLM has discretion to amend its land use plans “to consider a proposal or action that does not conform to the plan”, which therefore allows the BLM to alter or expand the range of alternatives

considered when revising land use plans (BLM Land use Planning Handbook H-1601-1, p. 45). In short, the BLM adequately identified and analyzed in the FEIS/RMPAs a range of reasonable alternatives.

The following addresses the specific comments raised by protesting parties regarding a range of reasonable alternatives:

Burial of transmission lines

Contrary to the protesting party's comments, the BLM did provide an explanation for considering but eliminating from analysis an alternative to bury all or a portion of the transmission line in the FEIS. Specifically, the BLM noted on page 2-267 of the FEIS that underground burial of transmission lines is not feasible for a number of reasons beyond the added cost, including longer outages, increased time for repairs, no ability to visually assess, decreased reliability in service, and need for specialized equipment.

Analyze reliance on decentralized power sources

The BLM adequately explained the elimination from further consideration of an alternative focused on decentralizing power sources. The FEIS at 2-168 explains that the BLM considered but eliminated this alternative from detailed analysis as it would not meet the BLM's purpose and need for the B2H Project, nor help in developing a reasonable range of alternatives. Also, the B2H Project is not designed to transmit electrical power from any identified power source but rather to increase transmission capacity in order to alleviate existing transmission constraints and ensure sufficient capacity to meet projected increased system loads. Therefore, the BLM's basis for eliminating this as an alternative was appropriate and supported in the FEIS.

Inadequacy of the analysis of the No Action alternative

As noted on FEIS 2-164, "The No Action Alternative is intended to describe the existing and future state of the environment in the absence of the Proposed Action. It provides a baseline for comparing environmental effects and demonstrates the consequences of not granting the right-of-way and authorizing special use." The BLM's analysis in the FEIS of the No Action alternative comprised an appropriate assessment of environmental effects, commensurate with the analysis for the "Action" alternatives that described various ways to construct the B2H project.

Consideration of a line solely within existing corridors

The BLM did not elect to analyze an alternative solely within existing corridors, as this would not meet the BLM's purpose and need or the BLM's policies to engage the public. When there are potentially a very large number of alternatives, the BLM may only analyze a reasonable number to cover the full spectrum of alternatives (BLM Handbook H-1790-1, Section 6.6.1 (quoting CEQ, Forty Most Asked Questions Concerning CEQ's NEPA Regulations at Question 1b (Mar. 23, 1981))). The EIS identified and analyzed a reasonable range of alternatives, although it was not practicable to include one limited to existing approved corridors.

Criteria used to develop the network of preliminary alternative routes for the B2H Project were based on available siting opportunities and constraints to siting the line. Constraints are defined as environmental or engineering conditions or management prescriptions for an area limiting or precluding access to or siting of structures or facilities (e.g., terrain, airports, utility exclusion areas, etc.). Opportunities are conditions that can accommodate facility construction and operation and are

not precluded by engineering or environmental constraints.

Among the criteria that offer siting opportunities are: (1) co-locating with existing linear facilities (e.g., transmission lines, pipelines); (2) designated utility corridors (e.g., designated in land use plans, West-wide Energy Corridors); and (3) transportation corridors (e.g., roads, highways, rail lines). Where feasible and reasonable, these siting opportunities were used by BLM when developing alternative routes and variations.

Regarding use of designated utility corridors, such corridors are applicable only to the lands of the designating jurisdiction (e.g., federally designated utility corridors are applicable only to federal lands; therefore, a designated corridor is interrupted by intervening jurisdictions (e.g., state land, private land) and, consequently, corridors are discontinuous and of relatively short length for a long-distance linear facility. Conditions or resource sensitivity may have precluded collocation or use of segments of a designated utility corridor. Final EIS Map MV-12 shows land ownership, utility corridors, and right-of-way avoidance and exclusion areas. Results of impact assessment and the mitigation planning process (Boardman to Hemingway FEIS/RMPAs, Section 5.2.1) provided the data necessary to compare the alternative routes and variations to identify the environmentally preferable action alternative.

Comments on the Draft EIS recommended alternative variations to address stakeholder concerns with the route alignments. The BLM incorporated several feasible alternative variations to review with the cooperating agencies and to consider for inclusion in the Final EIS. Several comment responses noted the BLM's good faith effort to identify routes that follow existing infrastructure. Comment Response (Appendix K6-341) states "Alternative analysis has been revised to include additional routes and variations resulting from the Draft EIS comment period. Colocation with existing utilities is given preference where feasible." Appendix K6-316 states "Analysis has been expanded to include alternative route variations with careful consideration of opportunities for collocation of utilities and potential for utility conflicts. See Section 3.2.6 for further detail."

In identifying the Agency Preferred Alternative route, although BLM attempted to show deference to colocation with existing corridors, other factors were considered that carried greater weight. Because a high percentage of the land in the B2H Project area that would be crossed by the proposed transmission line is privately owned (approximately 70 percent private or state, 30 percent federally administered), the BLM collaborated extensively with the cooperating agencies, where needed, to develop alternative variations that would respond to the concerns of the stakeholders affected most directly by the alternative routes and variations. These adjustments as well as practical considerations mentioned previously, did not allow for consideration of a line sited entirely within existing corridors.

Baker County

As noted in the response to comments, Appendix K- 25, "Based on comments received by the BLM on the Draft EIS, collaboration with the counties and their constituents occurred, resulting in a number of recommended routing variations/options, which were incorporated into the network of alternative routes analyzed for the Final EIS. Refer to Sections 2.1.1.3 and 2.5.2. The FEIS has been updated to expand the discussion of compliance with existing land use plans, local permit requirements, and the EFSC permit process and identify any areas where there is a conflict between the B2H Project and existing planning guidance. See Section 3.2.6 for further detail including

expanded discussion of the EFSC process.” The BLM took appropriate steps to consider concerns of counties when developing a range of reasonable alternatives

Designated utility corridor thru central Oregon not being considered

The north-south utility corridor designated on federal lands in central Oregon is approximately 160 miles to the east of the B2H Project area. Use of that corridor would not be reasonable, considering the transmission line terminals are much farther east near Boardman, Oregon and Hemingway, Idaho. As noted in the response to comment B9b (Final EIS Appendix K8-62), “Use of this suggested route for the B2H Project does not meet the Applicant’s interests and objectives for the B2H Project and is not a reasonable alternative”. Throughout the B2H Project area, designated utility corridors and colocation with existing transmission lines were used in siting and developing alternative routes and variations to the extent practicable. Several comment responses noted the BLM’s good faith effort to identify routes that follow existing infrastructure. Appendix K6-341 states “Alternative analysis has been revised to include additional routes and variations resulting from the Draft EIS comment period. Colocation with existing utilities is given preference where feasible.” Appendix K6-316 states “Analysis has been expanded to include alternative route variations with careful consideration of opportunities for colocation of utilities and potential for utility conflicts. See Section 3.2.6 for further detail.”

New line should have followed freeway to the maximum extent possible, or be bundled into existing utility corridor swaths

Although this was not a practicable alternative, several comment responses noted the BLM’s good faith efforts to select routes that followed existing infrastructure. As discussed in Appendix-216: “Alternative analysis has been revised to include additional routes and variations resulting from the Draft EIS comment period. Colocation with existing utilities is given preference where feasible.” Appendix K-287 states: “Analysis has been expanded to include alternative route variations with careful consideration of opportunities for co-location of utilities and potential for utility conflicts. See Section 3.2.6 for further detail”.

NEPA – Hard Look

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-40
Organization: Wildlands Defense
Protester: Katie Fite

Issue Excerpt Text: The FEIS fails to take a hard look at environmental stresses and risks that are made worse by grazing and high road density disturbance, or extensively “treated” or logged landscapes, etc.

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-40
Organization: Wildlands Defense
Protester: Katie Fite

Issue Excerpt Text:
The EIS has greatly failed to take a hard look at the Land Use Plan requirements for protection of sensitive and important species habitats and populations. It does not ensure viability of the local and regional populations, and does not protect essential seasonal habitats, and does not promote habitat connectivity. It does not adequately conserve, enhance and restore GRSG and other rare species habitats.

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-40
Organization: Wildlands Defense
Protester: Katie Fite

Issue Excerpt Text:
The EIS fails to provide a full current picture of “need” for any line. It failed to take a hard look at the energy landscape in the future.

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-45
Organization: Oregon Natural Desert

Association
Protester: Dan Morse, et. al.

Issue Excerpt Text:
The FEIS provides no information about how many large old trees the logging associated with the B2H project would remove. This is an unacceptable failure to provide relevant information to the public that would allow more meaningful comment than simply providing the number of potentially affected acres. Although we asked for this information in our comments (FEIS at K9- 1 19), it was not provided anywhere in the FEIS, including in Section 3.2.6 referred to in the response to comments. ... But without specific information regarding how many of such trees are likely to be lost, the proposed amendments to the Eastside Screens do not satisfy the “hard look” required under NEPA.

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-45
Organization: Oregon Natural Desert Association
Protester: Dan Morse, et. al.

Issue Excerpt Text:
By failing to disclose how it intends to comply with its obligations under FLPMA Title V, BLM in the FEIS fails to take a “hard look” at this issue. This failure renders any decision to approve the B2H project arbitrary and capricious.

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-45
Organization: Oregon Natural Desert Association
Protester: Dan Morse, et. al.

Issue Excerpt Text:
The FEIS’s discussion of effects on vegetation,

particularly in Section 3.3.3.3, Vegetation and Segment 2 through Union County, is inadequate to support a reasoned decision whether to approve this project. BLM has failed to provide accurate, high-quality, current information regarding potential threats to vegetation along the project route by not updating vegetation surveys for sensitive plants and noxious weeds since 2008 and by using outdated plant lists in its discussion of vegetation. Reliance on or inaccurate stale data does not constitute a “hard look” under NEPA.

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-57
Organization: Individual
Protester: Irene Gilbert

Issue Excerpt Text:

I am protesting the fact that the Environmental Impact Statement fails to provide for mitigation of wildlife impacts to threatened, endangered and at risk species and failed to take a hard look at the impacts to those species based upon valid documentation of the potential to impact their survival and avoid population declines. The fact that species are listed is an indication that they meet five criteria (Section 4(a)(1)) which indicates:

1. That there is a present or threatened destruction, modification, or curtailment of its habitat or range;
2. An over utilization for commercial, recreational, scientific, or educational purposes;

Summary:

The FEIS fails to take a hard look, as required by NEPA, at the following issues:

- Environmental stresses and impacts to wildlife, vegetation, and old-growth trees that are intensified by grazing, road density disturbance, or extensively treated or logged landscapes; and
- The need for the project and its future energy landscape.

3. The species is declining due to disease or predation;
4. There is an inadequacy of existing regulatory mechanisms. AND
5. There are other natural or man-made factors affecting its continued existence.

Species listing must be “based solely on the scientific and commercial data available”. The Environmental Impact Statement has not provided data to overrule the decisions that have been made in determining that the listing was justified. A hard look would mean providing data that indicates that the decisions to list these species was not justified or scientific and commercially available data to prove that the transmission line will not mean their status will become even more tenuous.

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-57
Organization: Individual
Protester: Irene Gilbert

Issue Excerpt Text:

These impacts include existing wind developments previous, current and future wildlife impacts and the fact that the Oregon Department of Energy refuses to enforce federal wildlife protections on private property in Oregon. The lack of these assessments results in a failure of the EIS to meet the requirements to take a “hard look” at the wildlife impacts of this development.

Response:

NEPA directs that data and analysis in an EIS must be commensurate with the importance of the impact (40 CFR 1502.15), and that NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail (40 CFR 1500.1(b)). The BLM is required to take a “hard look” at potential environmental impacts of adopting the Boardman to Hemingway FEIS/RMPAs.

The level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.12). The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action.

Environmental Stresses: Wildlife, Vegetation, and Old-Growth

Contrary to the protesters’ comments, the BLM adequately considered the direct, indirect, and cumulative impacts to wildlife, vegetation, and old-growth trees in the Boardman to Hemingway FEIS/RMPAs. In the response to comments on the DEIS, the BLM noted that the FEIS has additional environmental analysis of the transmission line project on wildlife impacts, as well as the measures that will be taken to mitigate or minimize the potential footprint of the project (Boardman to Hemingway FEIS/RMPAs, Appendix K, p. K6-316). Section 3.2.4.3 highlights the wildlife concerns that the BLM examined further in the FEIS. Table 3-140 and 3-141 summarize the habitats for wildlife species, with the design features and mitigation measures that would be applicable to each habitat (Boardman to Hemingway FEIS/RMPAs, pp. 3-419 and 3-423). The methods and data sources used for the analysis are listed in Section 3.2.4. As it was stated in the FEIS, to effectively organize the overall analysis, the entire study corridor was divided into six B2H Project segments. These segments are mentioned throughout Section 3.2.4.5 and are analyzed in more detail for specific wildlife groups and species in Section 3.2.4.6. For example, the analysis for the Washington ground squirrel in Tables 3-168 and 3-169 quantify the potential mileage and acreage impacts to habitat that may result from the transmission line segments (Boardman to Hemingway FEIS/RMPAs, pp. 3-522 and 3-524). Additionally, Appendix E of the FEIS discloses the supporting data for the wildlife analysis.

For the analysis of vegetation and old-growth trees, the BLM revised its baseline of vegetation resources that could be impacted by the project. This is discussed in detail in Section 3.2.3 of the FEIS. Much like the wildlife analysis, the issues identified, methods and data sources, and environmental impacts analysis are extensively discussed in Sections 3.2.3.3, 3.2.3.4, and 3.2.3.6, respectively. Impacts of the project on old-growth forests specifically are discussed in Section 3.2.3.6, with additional discussion of potential impacts to old-growth resources under the authority of USFS disclosed in Section 3.4 (Boardman to Hemingway FEIS/RMPAs, pp. 3-227). Additionally, as noted in the response to comments on the DEIS, the BLM did expand the discussion of noxious weeds impacts from the project on native vegetation communities in the vicinity of the proposed route (Boardman to Hemingway FEIS/RMPAs, Appendix K, pp. K6-321 and K6-327).

The Need for the Project and the Future Energy Landscape

The purpose and need for an externally-generated project must describe the BLM purpose and need, not an applicant’s or external proponent’s purpose and need (BLM Handbook H-1790-1, p.

35), and it is the BLM's purpose and need for action that will dictate the range of alternatives and provide a basis for the rationale for the eventual selection of an alternative in a decision. In regards to the Boardman to Hemingway FEIS/RMPAs, taking into account the BLM's multiple use mandate, the "BLM's need is to respond to the Applicant's application for a right-of-way across public lands. The purpose is to grant, grant with modifications, or deny the Applicant's application for use of BLM-managed public lands to construct, operate, and maintain the B2H Project," (Boardman to Hemingway FEIS/RMPAs, Section 1.2.1, p. 1-7). The BLM is not required to analyze the need for externally-generated projects, but is required to demonstrate that it took a "hard look" at the impacts of a proposed project and the reasonable alternatives which would avoid or minimize adverse impacts (40 CFR 1502.1).

Additionally, the BLM does disclose that the Energy Policy Act of 2005, Executive Order 13604, and the President's Climate Action Plan (June 25, 2013) provide the guidance for federal agencies to look for ways to "improve domestic energy production, to develop renewable-energy sources, and to improve infrastructure for collection and distribution of energy resources" (Boardman to Hemingway FEIS/RMPAs, Section 1.2.1, p. 1-7).

In summary, the BLM took the required "hard look" at the impacts associated with approving the Boardman to Hemingway FEIS/RMPAs.

NEPA – Impacts Analysis – General

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-40
Organization: Wildlands Defense
Protester: Katie Fite

Issue Excerpt Text:

The proposed Land Use Plan amendments may imbalance existing land use plan protections through causing intensified conflicts between various uses, and undermine the public participation and promises made by the agencies in the original planning process.

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-40
Organization: Wildlands Defense
Protester: Katie Fite

Issue Excerpt Text:

The amendments threaten the sustainability of resources/values that the public was promised would be protected under the existing planning process. This is made worse due to the fact that the existing Land Use Plans did not take into account the added stresses caused by climate change on the values the Plans are supposed to protect; significant habitat losses of sagebrush and other fires since the plans were finalized - resulting in remaining intact sage having much greater relative habitat values for GRSG and several other TES species, etc.

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-43
Organization: Glass Hill Coalition
Protester: Dan Turley

Issue Excerpt Text:

First item of Protest -The comparison of the 34 mile length of the Mill Creek Alternative exaggerated its negative impacts in relation to visual impacts from 1-84 and the potential impacts to the presumed Oregon Trail route to the south and west of La Grande when compared to the other alternatives evaluated. The length of this Alternative should have been no more than 18 miles {Mile point 108 to 126} as shown on Attachment 1 & 2. It is unknown to us and others we have talked with as to why this alternative was established to be this length and when reviewing the EIS evaluation of the various routes this route is prejudiced due to its longer length when compared to the other routes with the shorter variations and associated lower negative impacts. As shown on Attachment 2 the impacts of the Mill Creek Alternative outside of the 18 mile section referenced would be essentially identical to the other two routes. The Mill Creek Alternative route would have been more accurately assessed if it had been evaluated as a variation to the Applicants Proposed Action.

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-46
Organization: Defenders of Wildlife
Protester: Karimah Schoenhut

Issue Excerpt Text:

Due to these problems, the FEIS fails to inform the public and the decision-makers of the true impacts of the alternatives, violating the requirements of the National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4321 et seq., and rendering the agency’s selection of a preferred alternative arbitrary and capricious.

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-55
Organization: Confederated Tribes of the Umatilla Indian Reservation

Protester: Eric Quaempts

Issue Excerpt Text:

Consideration of effects to historic properties has been poorly explained and incomplete. Due to a failure to provide the background information it has been impossible for the DNR to determine whether sites have been omitted from consideration or considered as not significant when in fact they are. The staff working on the cultural resources section of

the EIS documents lack familiarity with the history and prehistory of the region, as has been clear from their discussion of sites and context provided. Based on these failures and limitations, it is clear that the decision maker does not have adequate or equal levels of information regarding the alternatives. It is not possible for the decision maker to understand how the different alternatives will impact cultural resources. Any decision made has not taken into account those impacts.

Summary:

The FEIS violates NEPA by:

- failing to inform the public and decision-makers of the impacts of alternatives;
- failing to take a hard look at the relationship between proposed plan amendments and existing land use plan protections;
- exaggerating the negative impacts of the Mill Creek Alternative on visual impacts and the Oregon Trail; and
- inadequately considering the effects of the proposed project on historic properties.

Response:

The BLM must make a comprehensive consideration of a proposed action, to evaluate different courses of action (take a “hard look” at the environmental consequences). *Kleppe v. Sierra Club*, 427 U.S. 390, 410 (1976), n. 21; *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989). The agency may not rely on incorrect assumptions or data when analyzing effects. *Native Ecosystems Council v. U.S. Forest Service*, 418 F.3d 953, 964 (9th Cir. 2005). The BLM takes a “hard look” when the NEPA document contains a “reasonably thorough” discussion of an action’s environmental consequences, and the agency can make an informed decision about whether there are any significant environmental impacts. *Nat’l Parks and Conservation Ass’n. v. BLM*, 606 F.3d 1058, 1072 (9th Cir. 2010) (citing *State of California v. Block*, 690 F.3d 753, 761 (9th Cir. 1982)); *Biodiversity Conservation Alliance, et al.*, 171 IBLA 218, 226 (2007) (internal citations omitted).

The protesters assert that the BLM failed to take a hard look generally, as well as specifically at the effects of the Mill Creek alternative on visual resources and the Oregon Trail, effects on cultural resources, effects on land use planning decisions, and on the sustainability and protection of resources. However, the BLM adequately disclosed and analyzed the affected environment and environmental consequences of the alternatives in Chapter 3 of the FEIS. As explained further below, cultural resources are discussed in section 3.2.13 (Boardman to Hemingway FEIS/RMPAs pp. 3-1365 to 3-1582), Native American concerns in section 3.2.14 (Boardman to Hemingway FEIS/RMPAs, pp. 3-1583 to 3-1612), and National Historic Trails, proposed and existing, in section 3.2.15 (Boardman to Hemingway FEIS/RMPAs, pp. 3-1613 to 3-1900). Effects of the alternatives are disclosed and analyzed in section 3.2.6 (Boardman to Hemingway FEIS/RMPAs, pp. 3-739 to 3-926). Effects to visual resources are disclosed and analyzed in section 3.2.12 (Boardman to Hemingway FEIS/RMPAs, pp. 3-1167 to 3-1364). The Mill Creek segment is identified in the FEIS in Chapter 2, as part of the Variation S2 Area D alternative (Boardman to Hemingway FEIS/RMPAs, p. 2-142). As noted in Section 2.5.1, “consistent with Section 102(2)(A) of NEPA, the process described uses “a systematic interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision making, which may have an impact on man’s environment” (as specified

in 40 CFR 1507.2).”

Cultural Resources

Contrary to the protester's comments, the BLM provided sufficient background information on the locations of historic and cultural properties in the analysis area and identified and developed an approach for conducting necessary cultural resource surveys as part of the process for complying with Section 106 of the National Historic Preservation Act (i.e., as reflected in the Programmatic Agreement negotiated through consultation with consulting parties in the Section 106 process), and thus the analysis adequately discloses and considers potential effects to cultural resources associated with the alternatives. Specifically, the BLM described the general study methods used to identify the cultural and historic resources in sections 3.13 and 2.5.1 of the FEIS, including the Oregon Trail, and then described how those resources were analyzed (Boardman to Hemingway FEIS/RMPAs, pp. 3-1372 to 3-1378). The BLM then disclosed the more specific study methodology used, including describing the analytic model in sufficient detail to inform a reasoned analysis (Boardman to Hemingway FEIS/RMPAs, pp. 3-1379 to 3-1381). The BLM devoted 247 pages to disclosing and analyzing the general and specific impacts of the alternatives on the cultural and historic properties that the BLM was aware of in the analysis area. The BLM disclosed the cultural context of the analysis area, discussing the general history and pattern of human activity within the landscape (Boardman to Hemingway FEIS/RMPAs, pp. 3-1385 to 3-1395). Additional information beyond that presented in the FEIS is either confidential or is not available, and the BLM disclosed that in the FEIS (Boardman to Hemingway FEIS/RMPAs, pp. 3-1372 to 3-1377). The BLM identified the relevance of the information. *Id.* The BLM summarized the existing information (Boardman to Hemingway FEIS/RMPAs, pp. 3-1385 to 3-1395). The BLM provided an effects analysis based on the existing information and that scientific model (Boardman to Hemingway FEIS/RMPAs, pp. 3-1378 to 3-1612). Additionally it is important to note that continued work will occur on any selected route to identify and mitigate adversely affected properties in accordance with the Programmatic Agreement which has been negotiated for the B2H Project and the treatment and mitigation for adverse effects (direct or indirect) to NHTs under Section 106 of the NHPA. FEIS Section 3.2.13.4 further describes the process that will be used to complete the survey process and evaluation of identified properties for the National Register of Historic Places. After the ROD and prior to any NTP for the project, the Class I inventory will be updated and a complete Class III inventory as described in the PA will be prepared and reviewed and approved by the consulting parties to the PA and the agency. Site specific location of these properties will allow additional micro siting to then occur to further avoid, reduce or minimize impacts to the NHTs. After this step the Historic Properties Management Plan described in the PA will be prepared and reviewed/approved by the consulting parties to the PA and the agency, which will further direct the site specific mitigation for each eligible property under the NHPA that is impacted by the selected route.

Additionally, the BLM disclosed that some data is confidential, specifically that data gathered by a tribe as part of an ethnographic study, and thus is not specifically disclosed in the FEIS (Boardman to Hemingway FEIS/RMPAs, p. 3-1377). The BLM did, however, consider the data provided by the tribes, including the Confederated Tribes of the Umatilla Indian Reservation (CTUIR). *Id.* The BLM also considered the CTUIR's analyses and field studies conducted to identify traditional foods of significance to the tribe. *Id.*

Accordingly, the BLM has adequately identified, analyzed, and disclosed the effects of the proposal and the alternatives to cultural resources as required by NEPA.

Oregon National Historic Trail

The analysis of impacts on the ONHT was expanded in the FEIS to more fully address BLM Manual 6820 direction and to address comments received on the Draft EIS (refer to Appendix K6). The BLM appropriately analyzed and disclosed the potential effects to the Oregon National Historic Trail (ONHT) in the FEIS. The BLM included in the FEIS a discussion of National Historic Trails, including the ONHT (Boardman to Hemingway FEIS/RMPAs, pp. 3-1613 to 3-1900). Specifically, the potential effects to the ONHT are discussed and analyzed in detail in the FEIS (Boardman to Hemingway FEIS/RMPAs, pp. 3-1620 to 3-1622; 3-1630 to 3-1721). The protest has not identified any information or other reason to revise the FEIS or decision on this issue.

Mill Creek Alternative

Regarding the length of the Mill Creek Alternative, the FEIS is broken up into 6 segments. The second segment, Blue Mountains, begins west of La Grande in Union County and ends east of North Powder in Union County. As is discussed in Section 2.5.2.2, there are three alternative routes and six areas of local route variations in this segment. The protester alleges that the Mill Creek Alternative - one of the three alternatives for Segment 2 - is artificially longer than the other two alternatives, and therefore its overall impacts are higher than necessary.

However, the analysis of the segment alternatives is dependent on the analysis of each segment starting and finishing in the same location, in this case, west of La Grande in Union County and ends east of North Powder in Union County. To only analyze the 18 miles that are unique to the Mill Creek alternative, as the protester suggests, would be understating the overall impact, because it would not include the entire length needed to connect the two terminuses of this segment of the project. Alternatively, the analysis could have analyzed the 18 miles of unique segment within Mill Creek as a local route variation; however, the end result of the impacts analysis would have been the same.

Relationship to land use plans

Contrary to the protester's comment, the BLM considered existing land use plans when analyzing the impacts of the Boardman to Hemingway FEIS/RMPAs. As part of the decision-making process, the BLM must determine whether the Boardman to Hemingway project conforms with the land use plans for the management areas through which it passes. The BLM determined that some aspects of the project do not conform to the management direction in one or more land use plans. For those portions of the project where avoidance and mitigation measures would be insufficient to bring the project into conformance with the Federal administering agency's land use plan, land use plan amendments were pursued. Besides the portions requiring a plan amendment, the BLM determined that the remaining aspects of the project are in conformance with existing land use plans. The resource protections established in these land use plans are reflected in the FEIS.

NEPA – Impacts Analysis – Wildlife, Fish & Plants

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-40
Organization: Wildlands Defense
Protester: Katie Fite

Issue Excerpt Text:

Table FEIS E-1 lists species, but full current surveys have not been conducted. Table FEIS E-2 lists the 5 mile corridor on either side of the powerline as the study area (despite many populations of TES species in serious trouble requiring much larger areas to survive (many forest carnivores and other species): or whose functional local populations extend over significantly greater land areas (sage-grouse, many migratory birds, for example).

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-40
Organization: Wildlands Defense
Protester: Katie Fite

Issue Excerpt Text:

A full and detailed analysis of local and regional sage-grouse populations affected by this line and any ancillary lines or developments (such as industrial wind, largescale solar) that may be spawned must be fully examined in the EIS.

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-40
Organization: Wildlands Defense
Protester: Katie Fite

Issue Excerpt Text:

Failure to conduct such habitat and population analysis necessary to determine if mitigation by avoidance is required represents a failure to comply with the ARMPAs, as well.

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-46
Organization: Defenders of Wildlife
Protester: Karimah Schoenhut

Issue Excerpt Text:

... evaluate and compare alternatives with regard to impacts to Greater Sage-grouse from exacerbating genetic isolation.

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-46
Organization: Defenders of Wildlife
Protester: Karimah Schoenhut

Issue Excerpt Text: The FEIS Fails to Evaluate and Compare the Impacts of the Alternatives on Greater Sage-grouse Genetic Connectivity. The FEIS does not evaluate the extent to which the various alternatives would affect greater sage-grouse populations by further limiting genetic connectivity, despite recognizing the importance of connectivity to maintaining populations.

Despite noting the importance of considering the spatial relationship of habitat patches in assessing impacts due to lost habitat connectivity, which in turn reduces genetic connectivity between populations, the FEIS does not evaluate the impacts of the alternatives with respect to how the various routes would disrupt the connectivity of greater sage-grouse habitat. Nor does the FEIS discuss how the various routes would in turn further reduce the genetic connectivity of populations. Instead, the FEIS compares the alternative routes based on the total miles of “core” habitat (PHMA) and general habitat (GHMA) crossed, see e.g., FEIS at 3-472, and the number of leks in proximity to the

alternative routes, see e.g., FEIS at 3-474. While these factors are important, they do not provide an evaluation of the extent to which each alternative route may create barriers between portions of habitat that may represent important connections between or within populations. For example, although the FEIS states that there is evidence of “some connection of the Baker population with adjacent populations” based on radio-tracking of a female moving between the spring/summer range east of Keating, Oregon, and winter locations northwest of Weiser, Idaho, FEIS at 3-470, the FEIS does not examine how the alternative routes might differentially disrupt that connection.

The failure to assess such disruption is particularly egregious since the already limited connectivity of the Baker population is contributing to its decline, and further disruption would exacerbate the isolation of the population, and the negative consequences of such isolation on the genetic diversity of the population.

The failure of the FEIS to assess impacts to genetic connectivity makes its conclusion that the Project will not affect population viability arbitrary and capricious. Furthermore, the failure to assess impacts to genetic connectivity makes the selection of the Agency Preferred Alternative for the segments affecting greater sage-grouse

Summary:

The FEIS fails to adequately characterize environmental effects to:

- Greater Sage-Grouse habitat and genetic connectivity;
- Migratory Birds; and
- threatened and endangered species.

Response:

The BLM complied with NEPA’s requirement to analyze the environmental consequences/impacts to wildlife in the Boardman to Hemingway FEIS/RMPAs. NEPA directs that data and analyses in an EIS must be commensurate with the importance of the impact (40 CFR 1502.15), and that NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail (40 CFR 1500.1(b)). The BLM is required to take a “hard look” at potential environmental impacts of adopting the Boardman to Hemingway FEIS/RMPAs.

The level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (impact) caused by the proposed action and

arbitrary and capricious.

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-57

Organization: Individual

Protester: Irene Gilbert

Issue Excerpt Text:

The final environmental impact statement also fails to include a Project-specific Migratory Bird Conservation Plan available for public review. This need was specifically identified in the US Fish and Wildlife comments submitted on March 19, 2015.

The Final Environmental Impact Statement also fails to include or discuss the July 23, 2013 US Fish and Wildlife Service submission regarding formal guidance on the Conservation Plan for this Project, nor has Idaho Power completed the plan. As previously noted in my protest, the Environmental Impact Statement is required to assess the impacts to wildlife over the entire route of the transmission line including private lands. Given the lack of enforcement of the Migratory Bird Protections, no Environmental Impact Statement should be issued which fails to identify the impacts resulting from a lack of enforcement and the Migratory Bird Conservation Plan which the developer is going to follow.

alternatives (BLM Handbook H-1790-1, Section 6.8.1.2 at 55). The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action.

Potential direct and indirect effects on Greater Sage-Grouse, migratory birds, and other threatened, endangered, or special status species are fully analyzed in Section 3.2.4.5 of the FEIS. The routes that comprise the Agency Preferred Alternative are listed in Table 2-18 and on page 2-202 of the FEIS.

Section 3.2.4.6 contains the results of the impacts analysis on wildlife resources, including the Greater Sage-Grouse. The analysis of the impacts to this species focuses on quantifying the impacts to the different kinds of habitat designations, such as Priority Habitat Management Areas (PHMA) and General Habitat Management Areas (GHMA). The analysis provides an alternative-by-alternative description of the potential impacts to Greater Sage-Grouse habitats for each alternative, as well as tables (such as Table 3-172) that list the number of miles of that the habitat that would be impacted. The FEIS discusses the Baker Greater Sage-Grouse population beginning on page 3-470, and acknowledges that the Baker population is more at risk and less resilient than other populations since connectivity with other populations is already limited (Boardman to Hemingway FEIS/RMPAs, p. 3-471). The analysis for Greater Sage-Grouse also acknowledges that any of the project alternative routes in Greater Sage-Grouse habitat may reduce genetic connectivity (Boardman to Hemingway FEIS/RMPAs, pp. 3-513 and 3-514). Due to the lack of information regarding genetic connectivity, the analysis did not compare the extent to which the various alternative routes would affect connectivity. An attempt to quantify potential effects to genetic connectivity would be speculative; therefore, the comparison of alternative routes takes into account the types of potential direct and indirect effects described in Section 3.2.4.6, but focuses on the amount of habitat disturbance in Greater Sage-Grouse PHMA, GHMA, and Important Habitat Management Areas (IHMA) that would be associated with each alternative route and impacts on known leks. The level of detail provided in the FEIS is sufficient to support a reasoned conclusion.

The analysis for migratory birds has been revised in the FEIS to include additional analysis and discussion of the direct and indirect effects to migratory birds. The analysis of impacts to migratory birds can be found in Section 3.2.4.6 of the FEIS. Additionally, the Applicant has committed to project-specific design features and mitigation measures, including pre-construction surveys, seasonal and spatial restrictions, limited project activities during nesting season (Boardman to Hemingway FEIS/RMPAs, Appendix B), and avian-safe design standards (Boardman to Hemingway FEIS/RMPAs, Appendix C). Compensatory mitigation required for Greater Sage-Grouse will provide further mitigation for impacts to shrub-steppe obligate migratory bird species, as described in Appendix C of the FEIS. The obligations under Executive Order 13816, “Responsibilities of Agencies to Protect Migratory Birds”, and the BLM and USFWS Memorandum of Understanding (MOU) are satisfied through the on-site mitigation that will be applied to avoid, minimize, and reclaim disturbed habitats. Thus, the BLM determined that a Migratory Bird Conservation Plan for the Boardman to Hemingway Transmission Line Project is not needed.

Lastly, as described in Section 3.2.4.4 of the FEIS, surveys for wildlife species will be conducted prior to any construction activities, and the design features and selective mitigation measures listed in Section 3.2.4.4 will be used to reduce impacts on species found during surveys.

The data and analyses in the FEIS is commensurate with the impacts associated with approving the Boardman to Hemingway FEIS/RMPAs. The BLM has adequately analyzed and disclosed the impacts of the project.

NEPA – Impacts Analysis – Visual Resource Management

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-02
Organization: Oregon-California Trails Association
Protester: William Symms

Issue Excerpt Text:

We feel that the route specified as the Tub Mountain South alternative does not take into consideration the historical setting of the Birch Creek area and that tower placement anywhere visible from the Birch Creek ACEC site will destroy the historical value of the site in general forever and all time.

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-08
Organization: Individuals
Protester: David & Karen Yeakley

Issue Excerpt Text:

[T]he line would harm view shed of BLM managed OR Trail Interpretive Center.

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-40
Organization: Wildlands Defense
Protester: Katie Fite

Issue Excerpt Text:

The FEIS continues to violate NEPA and FLPMA. It refuses to look at the Trails as a whole - including IPC's own segmented Gateway Project's very harmful impacts on Trails and visual resources.

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-40

Organization: Wildlands Defense
Protester: Katie Fite

Issue Excerpt Text:

For example, there is no mitigating RMP amendment that protects view sheds currently in VRM 3 or 4 by placing them in VRM 1 or 2.

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-45
Organization: Oregon Natural Desert Association
Protester: Dan Morse, et. al.

Issue Excerpt Text:

The analysis of effects from the proposed SEORMP Amendments for the Malheur S and Malheur A Alternatives in the FEIS inadequately characterizes the full extent of visual impacts to this important area and critical resources from the proposed B2H Project.

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-56
Organization: Individual
Protester: Whit Deschner

Issue Excerpt Text:

One of the major points in my unaddressed comments [was] regarding concern about the impact on and of the BLM's National Historic Oregon Trail Interpretive Center (NHOTIC).

The BLM's Historic Oregon Trail Interpretive Center was built to help the local economy and offset the local loss of timber and mining. The Interpretive Center has been the 'king pin' in promoting tourism in the county and it is the definitive premier historic site of the entire trail.

Why then does the BLM's mitigation approve of a route that runs in front of and ruins the view-scape of this valuable resource? This conflict of interest is hardly addressed in the

FEIS (reference 2-183). Even a burial proposal was superficially addressed concluding that burying the line would be too expensive.

Summary:

The FEIS fails to properly assess negative impacts to view sheds of the Birch Creek ACEC, the BLM's National Historic Oregon Trail Interpretative Center, and Owyhee River Below the Dam Wild and Scenic River (WSR) segment that was found suitable for designation.

The FEIS also fails to characterize the full extent of impacts to Malheur S and Malheur A Alternatives, does not use mitigation to place any VRM class 3 or 4 view sheds into VRM classes 1 or 2, and violates FLPMA and NEPA by not looking at trails as a whole.

Response:

NEPA directs that data and analyses in an EIS must be commensurate with the importance of the impact (40 CFR 1502.15), and that NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail (40 CFR 1500.1(b)). The BLM is required to take a "hard look" at potential environmental impacts of adopting the Boardman to Hemingway Transmission Line Final Environmental Impact Statement and Associated Resource Management Plan Amendments.

The level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2). The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action.

Birch Creek ACEC Viewshed

The BLM addressed the full range of impacts on the Oregon National Historic Trail, including the Birch Creek ACEC viewshed (see FEIS, pp. 3-1856 to 3-1857). Views from the Birch Creek ACEC would be highly impacted by the B2H Project due to unobstructed views of skylined transmission line structures in the foreground distance zone, dominating the setting (see visual simulation from KOP 8-3 [FEIS, Appendix H, p. H3-63]). The application of selective measures would not be effective at reducing the impacts resulting from these skylined transmission structures as there are limited opportunities to physically reroute the project in this area. To avoid comprising the trail's nature and its purpose in this area of trail interpretation, compensatory mitigation would be required to offset these effects as described in Appendix C of the Final EIS.

The National Historic Oregon Trail Interpretative Center

Contrary to the protester's comments, the BLM fully addressed the impacts on the viewshed of the National Historic Oregon Trail Interpretative Center (NHOTIC) as outlined in the FEIS. Specifically, the BLM stated that "the B2H Project would highly affect views on the NHOTIC (Visual Resource KOPs #5-25a, 5-25b, 5-25c, 5-25d, 5-25e, and 5-60)" (Boardman to Hemingway FEIS/RMPAs, p. 3-1817). Additionally, the BLM addressed impacts to "[v]iews toward the west from the NHOTIC, including Visual Resource KOPs #5-25a-e", that ... "would be minimally affected by the B2H Project, including views into Baker Valley, as viewers would be directed away from the B2H Project." The FEIS stated that "...the application of selective mitigation measures to first limit the construction of access roads, and if necessary, route access roads to minimize earthwork, would lessen these impacts but remain at a high impact level" (FEIS, p. 3-1818). The FEIS notes that, "Beginning at the Oregon Trail Kiwanis Club Memorial,

recreation users would have their views increasingly dominated by the B2H Project approaching the entrance to the NHOTIC including views at the Oregon Trail Ruts Interpretive Site where unobstructed views of the B2H Project traversing a ridge to the south of Virtue Flat would occur,” (Boardman to Hemingway FEIS/RMPAs, p. 3-1818).

For recreation and socioeconomic-specific effects on the NHOTIC, refer to Sections 3.2.8 and 3.2.17 respectively. The overall extent of the B2H Project that would be visible within the foreground and middle ground distance zones from all trail-associated viewing locations is quantified in Table 3-506, p. 3-1813.

Owyhee River below Dam WSR segment

Because of potential negative impacts on portions of the Owyhee River below the Dam WSR segment, the BLM Agency Preferred Alternative identified a route that does not cross the Owyhee River Below the Dam WSR segment (Boardman to Hemingway FEIS/RMPAs, Section 2.5.2.5).

As stated in the FEIS, “Placement of any B2H Project components across the Owyhee River suitable segment would be micro sited prior to construction in coordination with the BLM to minimize surface or visual disturbances from towers or other facilities and to minimize impacts on the visual environment (refer to Section 3.2.12). Other selective mitigation measures that would be applied include minimizing ground disturbance associated with construction and maximizing the span length between transmission line structures at the river crossing to reduce their dominance within [the] Owyhee River’s viewshed to the extent that is technically feasible” (Boardman to Hemingway FEIS/RMPAs, p. 3-1166).

Malheur S and A Alternatives

The BLM addresses a full range of possible impacts to the Malheur S and A alternatives and concludes that those alternatives to Malheur S and Malheur A alternatives (Segment 5) will not impact the Oregon Trail ACEC Birch Creek (Segment 4) or the NHOTIC (Segment 3). See FEIS, section 3.2.11.6. Both alternatives use a BLM utility corridor and a West-Wide Energy Corridor (in different areas) that are designated for all utility types. The routes are located adjacent to an existing 500-kV transmission line in the West-Wide Energy Corridor (Boardman to Hemingway FEIS/RMPAs, p. 3-1161).

Mitigation in regards to VRM viewshed changes

The NHOTIC was identified as one of several federal protective components by the NPS in their 1999 Comprehensive Management and Use Plan to protect the Oregon National Historic Trail’s historic route and historic remnants and artifacts for public use and enjoyment. Reducing impacts on these federal protection components is critical to meet the NTSA of 1968 requirement of not substantially interfering with the trail’s nature and purpose. In order to reduce effects on views from the NHOTIC, after application of design features (e.g., use of non-specular conductors to reduce glare), the B2H Project would be designed to minimize earthwork associated with construction of access roads and use overland access to the extent practicable. Additionally, as shown in the simulation from KOP 5-25D (Boardman to Hemingway FEIS/RMPAs, Appendix H, p. H3-101), these effects could be further reduced by changing the project design to an H-frame here to match the existing 230-kV transmission line. After the application of design features and selective mitigation measures, the approach to mitigate remaining effects is described in the Mitigation Framework (Boardman to Hemingway FEIS/RMPAs, Appendix C, p. C-39). The

mitigation plans designed under the Mitigation Framework will identify the level of residual impacts on federal protection components (National Trail Management Components) and the level of compensatory mitigation identified will be commensurate with the adverse impacts identified in the Final EIS. Because the BLM decided that visual resource management did not meet the threshold for this particular compensatory mitigation level, it was not considered in this analysis. The VRM conclusions reached are directly related to the overall nature and purpose of the trail, per BLM Manual 6280.

As the name suggests, the Compensatory Mitigation Framework is intended to be a detailed framework, not a site-specific mitigation plan, to discuss how direct and indirect impacts for the B2H Project were identified. The Compensatory Mitigation Framework: (1) establishes the process through which the impacts will be assessed; (2) establishes how avoidance and minimization have eliminated and/or reduced impacts; and (3) identifies unavoidable impacts to be addressed for which a list of compensatory mitigation could be applied in specific areas to offset the remaining residual impacts.

Upon selection of the final route in the Record of Decision and following final engineering and design, the Compensatory Mitigation Framework will be used as the basis to prepare the Compensatory Mitigation Plan. The compensatory mitigation plan will quantify the direct and indirect impacts based on an engineered and designed alignment, and identify a suite of site-specific compensatory mitigation options for selection and implementation under the review and guidance of the cooperating agencies. A final detailed compensatory mitigation plan will be reviewed by the cooperating agencies and a recommendation will be made to the Authorized Officer for approval prior to any issuance of Notices to Proceed. This plan will identify the level of residual impacts on federal protection components (National Trail Management Components) and the level of compensatory mitigation identified to be commensurate with the adverse impacts identified in the FEIS (Boardman to Hemingway FEIS/RMPAs, Appendix C, page C-39).

The assessment of cumulative effects considered past, present, and future projects within 10 miles of the B2H Project. Although views can extend beyond 10 miles, the 10-mile distance was chosen because it is near the limit of visibility of sky-lined transmission towers that may be noticeable to casual observers and beyond that the alternative routes would have negligible, if any, impacts contributing to cumulative impacts on the National Historic Trails and Study Trails (Table 3-638, p. 3-2068).

The assessment of the entire length of the Oregon NHT, more than 2000 miles across 6 states, would be beyond the geographic scope of the B2H Project. The assessment of the B2H Project direct effects identified areas of compensatory mitigation (e.g., NHOTIC, Oregon Trail ACEC – Birch Creek, etc.), where the B2H Project was found to substantially interfere with the Oregon NHT's trail-wide nature and purpose as required by the NTSA of 1968 (Section 3.2.15.7 – Environmental Consequences under Nature and Purpose in the Trail Management section). Each project in proximity to the Oregon NHT, and other NHTs, are required to meet this, and other thresholds, to not substantially interfere with the nature and purpose of a NHT. To focus the assessment of cumulative effects on lands potentially impacted by the B2H Project, the analysis included the NPS high potential route segments, NPS high potential historic sites (e.g., NHOTIC, Hilgard Junction, Farewell Bend, Birch Creek, etc.), NPS auto tour route, and congressionally designated alignment, in proximity to the B2H Project, in accordance with BLM Manual 6280.

The FEIS properly and accurately analyzes and assesses a full range of impacts to the Birch Creek ACEC view sheds, the NHOTIC, and the Owyhee River Below the Dam WSR segment. Additionally, the BLM addresses the full extent of impacts to the Malheur S and Malheur A Alternatives and applies appropriate compensatory mitigation resulting from the project.

NEPA – Impacts Analysis – Invasive Species

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-40
Organization: Wildlands Defense
Protester: Katie Fite

Issue Excerpt Text:

How will this corridor, all associated facilities, and other energy project/development proliferation linked to it - promote expansion of cheatgrass, medusahead, and other weeds? What lands are currently infested, and what lands are at risk for new or expanded infestation if this project is built? How many areas where these lines and facilities would be placed would be grazed by public lands livestock? What are the cumulative adverse effects of livestock grazing that will impact the same local and regional populations of native biota that this massive transmission line will impact? Until these questions are answered and adequate analysis is conducted, agencies cannot make any proper decisions on appropriate siting for the line.

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-40
Organization: Wildlands Defense
Protester: Katie Fite

Issue Excerpt Text:

Summary:

The FEIS does not adequately analyze the potential expansion of cheatgrass, medusahead, and other weeds. Further, the FEIS should not adopt seed mixes that include non-native species because they can be harmful to wildlife.

The FEIS states that "Vegetation communities" are evaluated in HUCs -yet they span watersheds, particularly as vegetation communities' change with elevation. The FEIS continues to fail to adequately examine the relative scarcity, importance and quality of the native vegetation communities impacted (including their importance for native pollinators and other rare insects and biota), how fragmented they are, how vulnerable they are to medusahead/weeds, how much they will be made more susceptible to weed invasion and spread with the all disturbance elements of the project?

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-40
Organization: Wildlands Defense
Protester: Katie Fite

Issue Excerpt Text:

BLM references its Seed Mix "current policy" - which means all manner of weedy aggressive exotic species that are harmful to native wildlife may be used - forage kochia (a weed), crested wheatgrass, etc. - as that is the current policy in Vale/Baker lands. BLM can hold the project to a higher bar - and this is essential given the great risk of irreversible medusahead and other weed invasion and site dominance.

Response:

NEPA directs that data and analyses in an EIS must be commensurate with the importance of the impact (40 CFR 1502.15), and that NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail (40 CFR 1500.1(b)). The BLM is required to take a “hard look” at potential environmental impacts of adopting the Boardman to Hemingway FEIS.

The level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2). The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action.

The Boardman to Hemingway FEIS contains both planning and implementation level decisions, though only the planning level decisions are protest able through this process. The analysis in the FEIS focuses on the direct, indirect, and cumulative impacts that could potentially result from the proposed action, and identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse. It is worth noting that the implementation-level decisions contained a great amount of detail and analysis regarding the impact of the project on vegetation communities within the project area.

In Section 3.2.3, the BLM analyzed the overall presence of many kinds of invasive species, including the kinds raised by these protests. As noted on page 2-243 of the FEIS, “Non-native Grasslands have extensively replaced native plant communities throughout the region and the B2H Project area.” The FEIS also contains segment by segment Vegetation Resources Inventory, which identifies non-native grasslands crossed (by mile) for each segment.

In addition to the description of the affected environment, the FEIS also details the level of impact to non-native grasslands on a segment by segment basis. These impacts are captured in a qualitative manner (“The extent of noxious weed invasion would be influenced by several factors, including the extent of B2H Project disturbance, preconstruction condition of native vegetation communities, and the distribution of noxious weeds in the surrounding area” Boardman to Hemingway FEIS/RMPAs, p. 3-367)), as well as quantitatively on segment-by-segment tables titled “Anticipated Disturbance for Vegetation Resources.”

The BLM complied with NEPA’s requirement to analyze the environmental consequences and impacts to invasive species in the Boardman to Hemingway FEIS/RMPAs.

NEPA – Cumulative Effects

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-40
Organization: Wildlands Defense
Protester: Katie Fite

Issue Excerpt Text:

We Protest the insufficient widths of the analysis and cumulative effects area. The FEIS states in Mapping: The width of the study corridor inventoried varies depending on the value being addressed. Earth, water, biological, paleontological, and land use and recreation resources were inventoried within a mere 1-mile-wide study corridor (0.5 mile on either side of the reference centerline. Cultural resources were inventoried within a 3- mile-wide study corridor (1.5 miles on either side of the reference centerline). Visual resources were inventoried within a 10-mi/e-wide study corridor (5 miles on either side of the reference centerline). The inventoried baseline data are shown in the study corridor and impacts are shown along the reference.

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-40
Organization: Wildlands Defense
Protester: Katie Fite

Issue Excerpt Text:

FEIS TES Cumulative Effects Map for TES species relies on a mere 3 miles distance from the powerline. This fails to adequately address TES species habitats, and local and regional population status and cumulative effects of the new transmission line, ancillary linked disturbances, and energy and development that will follow.

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-40
Organization: Wildlands Defense
Protester: Katie Fite

Issue Excerpt Text:

A thorough analysis of all existing roading in lands in or near the corridor has not been provided (location, route type, environmental effects, etc.).

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-40
Organization: Wildlands Defense
Protester: Katie Fite

Issue Excerpt Text:

Soils, paleo, vegetation and other sections appears do not adequately consider the extensive roading and myriad other disturbance effects of construction and operation.

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-40
Organization: Wildlands Defense
Protester: Katie Fite
Other Issue: Impacts Analysis – Visual Resources

Issue Excerpt Text:

The FEIS continues to violate NEPA and FLPMA. It refuses to look at the Trails as a whole - including IPC's own segmented Gateway Project's very harmful impacts on Trails and visual resources.

Issue Number: PP-OR-

BOARDMANHEMINGWAY-16-40

Organization: Wildlands Defense

Protester: Katie Fite

Issue Excerpt Text:

The FEIS constantly admits that streams and wetland disturbance will affect downstream habitats and conditions -but the analysis ignores the many and often overlapping and cumulative existing disturbance stresses on the watersheds (including upstream), or the important, TES and aquatic species habitats and populations threatened by habitat loss, degradation and fragmentation.

Issue Number: PP-OR-

BOARDMANHEMINGWAY-16-40

Organization: Wildlands Defense

Protester: Katie Fite

Issue Excerpt Text:

Elk, mule deer, pronghorn “area of potential stress” is referenced by the FEIS, but there is no consideration of the cumulative stresses on the local and regional populations, including as these extend outside the polygons.

Example: Soda Fire, rampant medusahead invasion of winter range due to chronic grazing disturbance, fire, or combined effects. Or logging or agency “treatment” projects removing security cover?

Issue Number: PP-OR-

BOARDMANHEMINGWAY-16-40

Organization: Wildlands Defense

Protester: Katie Fite

Issue Excerpt Text:

There has been no analysis of what is the full disturbance and fragmentation Footprint for both lines/projects [B2H and Gateway West] for sagebrush species? This is especially necessary in a landscape faced with increasing human development, sprawl threats of exotic grasses and other weeds that thrive on disturbance drastically and other

ongoing or foreseeable threats.

Issue Number: PP-OR-

BOARDMANHEMINGWAY-16-40

Organization: Wildlands Defense

Protester: Katie Fite

Issue Excerpt Text:

Oregon Owyhee bighorns are currently suffering from a significant disease outbreak caused by the organisms harbored by domestic sheep. Thus, the relative impacts of the new and expanded disturbance from the line may be made relatively greater - as populations may already struggle. FEIS mapping omits the bighorn sheep habitat on the Owyhee front identified in the BLM Owyhee 68 allotment grazing permit analysis (see for example, Poison Creek analysis) through use of the Payette Forest model. A reader of the B2H FEIS is not even informed where additional stresses/threat of domestic sheep grazing may be impacting bighorn habitats.

Issue Number: PP-OR-

BOARDMANHEMINGWAY-16-53

Organization: Elk Song Ranch

Protester: Brad & June Allen

Issue Excerpt Text:

The applicant’s September 2015 revised application to the BLM clearly indicates that the Wheat Ridge Wind Project in Morrow County is a connected action and should have been considered in the analysis as a connected action... The Wheat Ridge Wind Project was recently approved for a site certificate from EFSC and therefore is certainly “reasonably foreseeable.” Clearly the agency and applicant must have discussed this issue, because review of the various figures in Chapter 2 shows that most of the figures were taken directly from the applicant’s various revisions to the SF-299 application with one exception.

Summary:

The FEIS fails to consider cumulative effects because:

- the cumulative impact area of analysis is insufficient for multiple resources;
- the cumulative impact area of analysis for threatened and endangered species does not cover the extent of species habitat or applicable past, present, and reasonably foreseeable future actions;
- there is no analysis of the effects of the Boardman to Hemingway and Gateway West transmission line projects on sagebrush species, such as Greater Sage-Grouse;
- relevant past, present, and reasonably foreseeable future actions were not considered in the analysis; and
- it does not adequately analyze cumulative impacts on vegetation or big game resources including bighorn sheep.

Response:

The BLM must discuss the cumulative effects of the proposed action and the alternatives when preparing an EIS (BLM Handbook H-1790-1, Section 6.8.3). The CEQ regulations define cumulative effects as "...the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such actions" (40 CFR 1508.7).

The BLM has complied fully with the requirements of 40 CFR 1508.7 and prepared a cumulative impact analysis based on the broad nature and scope of the proposed management options under consideration at the land use planning level. The cumulative impact analysis considered the effects of the planning effort when added to other past present and reasonably foreseeable (not highly speculative) Federal and non-Federal actions. The cumulative impacts section (Boardman to Hemingway FEIS/RMPAs, Section 3.3, pp. 3-2063 to 3-2424) identifies all actions that were considered in the cumulative impacts analysis, and provides a basis for the cumulative impacts analysis for each affected resource.

The analysis took into account the relationship between the proposed action and these reasonably foreseeable actions. This served as the determining factor as to the level of analysis performed and presented. The information presented in the Boardman to Hemingway FEIS/RMPAs enables the decision-maker to make a reasoned choice among alternatives.

Table 3-638 describes the temporal and geographic scale for each resource considered under the cumulative effects section. Each resource also has a justification for why the temporal and geographic scale was chosen. Subsequent tables describe past and current actions that may add to cumulative effects, as well as reasonably foreseeable actions that could add to cumulative effects. These tables are an introduction to the extensive cumulative effect analysis that follows.

Protesters state a disagreement with choices for the temporal and geographic scales used, or assert a general failure to analyze cumulative effects, but fail to present new information, describe how the quantitative or qualitative analysis is flawed, or show a violation of law, regulation or policy for the scales used.

Section 3.2.4.6 contains the results of the impact analysis on wildlife resources, including Greater Sage-Grouse. The analysis provides an alternative-by-alternative description of the potential

impacts to Greater Sage-Grouse habitats for each alternative, as well as tables (such as Table 3-172) that list the number of miles of sage grouse habitat that would be impacted. The analysis for Greater Sage-Grouse also addresses habitat fragmentation as a potential impact. Generally, “construction of the B2H project in Greater Sage-Grouse habitat could increase the potential for fragmentation of habitats primarily as a result of avoidance of habitats near the transmission line due to the introduction of tall structures, EMF, and new roads,” (Boardman to Hemingway FEIS/RMPAs, p. 508). The cumulative effects on wildlife resources are discussed in Section 3.3.3.4 of the FEIS. As described in this section, potential direct effects on Greater Sage-Grouse include, for example, mortality due to electrocution, collisions with vehicles, fragmentation of habitats, and loss and degradation of habitat quality and function (Boardman to Hemingway FEIS/RMPAs, p. 3-2215). The cumulative effects analysis for Segment 6 discloses that the Applicant’s Proposed Action and Variations S6-B1 and S6-B2 would contribute to the cumulative loss, fragmentation, and modification of Greater Sage-Grouse habitat in IHMA resulting from past and present actions and reasonably foreseeable actions in the analysis area. Additionally, none of the alternative routes and route variations would contribute to cumulative effects on either PHMA or GHMA (Boardman to Hemingway FEIS/RMPAs, p. 2243).

Similar arguments regarding cumulative effects analysis were brought to the Interior Board of Land Appeals (IBLA) on appeal from the BLM’s approval of the grant of rights-of-way for the Gateway West Transmission Line. The IBLA noted “it is well established that in order to demonstrate a deficiency in BLM’s cumulative impacts analysis, ‘it is not sufficient merely to note the existence of other...projects...without concretely identifying the adverse impacts caused by such other...projects to which the action being scrutinized will add.’” (Western Watersheds Project, 188 IBLA 277, 286 (2016) (citing National Wildlife Federation, 150 IBLA 385, 399 (1999)). The IBLA then determined that these arguments did not have merit because the appellant “failed to meet its burden to demonstrate BLM erred in its analysis and consideration of cumulative impacts” (*Id.*).

Trails

The BLM assessed direct and indirect effects of the proposed action and alternatives on National Historic Trails and trails under study for congressional designation in section 3.2.15.7 of the Boardman to Hemingway FEIS/RMPAs according to the methods identified in section 3.2.15.5, and it assessed cumulative effects of the proposed action and alternatives on these trail resources in section 3.3.3.15. The assessment of direct and indirect impacts included effects on management of the Oregon NHT and trail resources such as the NPS high potential route segments, NPS high potential historic sites, NPS auto tour route as well as trail associated recreation sites, and historic resources. Remaining impacts on the Oregon NHT, specifically those areas where the B2H Project could substantially interfere with the trail’s nature and purpose, including high potential route segments, would require compensatory mitigation as required by the NTSA of 1968 (Section 3.2.15.7 - Environmental Consequences under Nature and Purpose in the Trail Management section) and outlined in Appendix C of the Final EIS. Each project in proximity to the Oregon NHT, and other NHTs, are required to meet this, and other thresholds, to not substantially interfere with the nature and purpose of a NHT.

In Regard to cumulative effects, since the assessment of the entire length of the Oregon NHT (more than 2000 miles across 6 states) would be beyond the geographic scope of the B2H Project, the analysis focused on federal protection components potentially impacted by the B2H Project,

including the NPS high potential route segments, NPS high potential historic sites (e.g., NHOTIC, Hilgard Junction, Birch Creek, Farewell Bend, etc.), NPS auto tour route, and congressionally designated alignments in proximity to the B2H Project, in accordance with BLM Manual 6280.

The BLM assessment of cumulative effects considered past, present, and future projects within 10 miles of the B2H Project. Although views can and do extend beyond 10 miles, the 10-mile distance was chosen because it is near the limit of visibility of sky-lined transmission towers that may be noticeable to casual observers and beyond that the alternative routes would have negligible, if any, contributing to cumulative impacts on the National Historic Trails and Study Trails (Table 3-638, page 3-2068).

NEPA – Failure to Analyze

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-42
Organization: Baker County Commission
Protester: Bill Harvey

on private land, the findings from the FEIS and the resulting BLM decision will produce impacts on the natural and human environment that may be greater than that of a proposal that is sited on more federally managed land (reference FEIS page 1-33 and 34).

Issue Excerpt Text:

By not considering the environmental impact

Summary:

The BLM failed to analyze impacts on private land, ultimately minimizing the possible impact of choosing an alternative that located the project primarily on Federal lands.

Response:

NEPA directs that data and analyses in an EIS must be commensurate with the importance of the impact (40 CFR 1502.15), and that NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail (40 CFR 1500.1(b)). The BLM is required to take a “hard look” at potential environmental impacts of adopting the Boardman to Hemingway FEIS, including those impacts on non-federal lands and resources.

The level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2). The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action. The BLM is also required to analyze impacts of a decision on non-federal lands and resources.

The protest alleges that the lack of analysis of impacts to private land led to a conclusion that would minimize the impact of choosing an alternative that sited the project primarily on public lands. However, the introduction of the Chapter 3, Affected Environment and Environmental Consequences, states that the analysis did consider impacts to federal and non-federal lands, as required by NEPA. Section 3.1.3, Environmental Consequences, says “[a]lthough the federal agencies have no authority to either permit or prohibit construction of the Project on non-federal land, NEPA requires an analysis and disclosure of project effects on all lands, not just the effects to federal lands.” Additionally, the section “Alternatives Considered but Eliminated from Detailed Analysis,” contains an entire subsection (2.5.4.3) on the possibility of siting the project primarily on state and federal lands. This was included in response to public comment on the DEIS (Boardman to Hemingway FEIS/RMPAs, Appendix K-N) for such an alternative, but the section details why that option is technically infeasible.

The BLM did not violate law, regulation, or policy when it eliminated this possibility from further analysis due to technical infeasibility, and it did not violate law, regulation, or policy because it properly analyzed impacts to private land resources as part of the implementation level NEPA analysis for the Boardman to Hemingway FEIS.

NEPA – Affected Environment

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-42
Organization: Baker County Commission
Protester: Bill Harvey

Issue Excerpt Text:

The concept of burying the transmission line

in the area of the Interpretive Center has been discussed for almost the entirety of the project, and has specifically been brought up by Baker County and many county residents. The way the concept is discussed in the FEIS falls far short of the analysis and disclosure of environmental effects that is required under NEPA[....]

Summary:

The FEIS fails to adequately analyze burying the transmission line in the vicinity of the Interpretive Center, thereby failing to adequately analyze the affected environment in violation of NEPA.

Response:

As previously stated in the “NEPA-Range of Alternatives” section of this report, the BLM provided an explanation for considering but eliminating from analysis an alternative to bury all or a portion of the transmission line in the FEIS. Specifically, the BLM discloses on page 2-267 of the FEIS that underground burial of transmission lines is not feasible for a number of reasons, not simply the added cost. Underground transmission lines reduce system reliability and increase the complexity of operation and maintenance. Further, damage to the cable or components often result in longer durations of outages, as underground transmission lines require additional effort to identify, access, expose, and repair damaged cables. For these reasons, the reliability of underground transmission line service is reduced compared to overhead transmission.

Additionally, burying a transmission line would generally have greater environmental impacts (e.g., impacts on Greater Sage-Grouse habitat, agriculture, etc.), and undergrounding the transmission line was considered but eliminated from further analysis, as explained in Section 2.5.4.1 of the Boardman to Hemingway FEIS. “Burying segments of the transmission line may be possible as a measure to mitigate effects of the line, particularly visual effects; however, burying transmission lines may be incompatible with some uses, such as agriculture, forestry, wildlife habitat or enhancement, and/or future development depending on site-specific conditions,” (Boardman to Hemingway FEIS/RMPAs, p. 2-168). The BLM considered an adequate range of alternatives in the Boardman to Hemingway FEIS, and properly disclosed the reasons for not analyzing in detail the underground alternative in accordance with 40 CFR 1502.14.

NEPA – Climate Change

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-40
Organization: Wildlands Defense
Protester: Katie Fite

Issue Excerpt Text:

Climate Change concerns are abjectly ignored in the FEIS, as shown by BLM Comment Response at K6-147:

It is beyond the scope of existing science to relate a specific source of greenhouse gas emission with the creation (or mitigation) of any specific climate-related environmental effects. Further, since the specific effects of a particular action, which may contribute to or mitigate against climate change, cannot be determined, it is also not possible to determine whether any of these particular actions will lead to significant climate-related environmental effects. Finally, there are still not regulatory standards for climate change. Thus, the BLM believes the analysis in the EIS represents the best available science...

The DEIS also miscalculates the greenhouse gas emissions that are expected to result from the operation of the transmission line. The agencies erroneously state that operations of the transmission line will only result in 63 tons of greenhouse gas emissions per year. But this completely ignores the greenhouse gas emissions that result from the production of the energy that will be transmitted on the lines, and must be included in the NEPA analysis. Both upstream and downstream use of power, and the resultant greenhouse gas emissions must be considered as a direct and/or cumulative effect of the project. Nor can the agencies merely state that if the transmission line were not constructed, the power would still be created and sent elsewhere. The fact remains that if the transmission line is constructed, it will result in increased capacity on the grid and creates an incentive for increased power production. If this increased power production is to come from fossil fuels, the agencies must account for the associated greenhouse gas emissions with that production. Nor is not knowing specifically where the power will come from an excuse for not considering the greenhouse gas emissions of power production.

Summary:

The EIS failed to analyze the impacts of climate change on the project area, and the BLM did not fully address the climate change comments from the DEIS.

Response:

CEQ encourages federal agencies to evaluate GHG emissions and climate change impacts as they would other “reasonably foreseeable” impacts from the proposed federal action. Furthermore, NEPA directs that data and analyses in an EIS must be commensurate with the importance of the impact (40 CFR 1502.15), and that NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail (40 CFR 1500.1(b)). Analyzing the emissions from energy production which would

provide power to the transmission line (particularly from development that is not currently reasonably foreseeable) would not be commensurate to the importance of the impact. Nor would it provide meaningful information to support reasonable conclusions regarding the proposed project.

In regards to the “amplifying effects” of the proposed project on climate change, “it is beyond the scope of existing science to relate a specific source of greenhouse gas emission with the creation (or mitigation) of any specific climate-related environmental effects. Further, since the specific effects of a particular action, which may contribute to or mitigate against climate change, cannot be determined, it is also not possible to determine whether any of these particular actions will lead to significant climate-related environmental effects,” (Boardman to Hemingway FEIS/RMPAs, p. K6-147). The potential effects related to climate change are not ignored in the FEIS; rather, the analysis of air quality and climate change in the FEIS represents the best available science, as required by the CEQ guidelines.

Section 3.2.16.6 of the FEIS discusses the potential effects of the Boardman to Hemingway transmission line project on air quality and climate change. As described in this section, air quality and climate change effects may be generated from construction of access roads, construction of the transmission towers and pad sites, construction of substations and communications sites, and activities involved with the ongoing use and maintenance of the transmission line, substations, and right-of-way and decommissioning. The effects of the project are described project-wide because the intensity and duration of air quality and climate change effects would be substantially the same for all alternatives (Boardman to Hemingway FEIS/RMPAs, p. 3-1916). The 63 tons of GHG emissions (approximately 63 tons of CO₂ per year) referenced by the protester is specific to inspection and maintenance activities during the operations phase (Boardman to Hemingway FEIS/RMPAs, p. 3-1921).

Section 3.3.3.16 provides the cumulative effects analysis of the project. This section discloses that the cumulative effects from emission sources associated with the project would be minor and temporary, and that the reduction in coal-related emissions from the planned improvements to the Boardman Plant would help to offset the emissions from the Boardman to Hemingway transmission line project. Both the BLM and CEQ identify the pivotal role that the Boardman to Hemingway FEIS/RMPAs plays in a clean energy future for the country (<https://www.whitehouse.gov/administration/eop/ceq/initiatives/interagency-rapid-response-team-for-transmission>).

The BLM has evaluated all reasonably foreseeable impacts of the Boardman to Hemingway Transmission Line Project. The BLM also adequately addressed public comments, including those on climate change and environmental impacts, on the DEIS.

NEPA – Supplemental EIS

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-40
Organization: Wildlands Defense
Protester: Katie Fite

Issue Excerpt Text:

The public has not been allowed to comment on yet more new routes -in maps S-2a and S-2b. FEIS #-8 and S-9. A new EIS and comment period should be provided.

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-45
Organization: Oregon Natural Desert Association
Protester: Dan Morse, et. al.

Issue Excerpt Text:

[T]he FEIS apparently includes route segments that were not covered in any of the DEIS maps or documents. In such circumstances, the BLM should have first issued a supplemental DEIS to describe and seek public comment on the new Agency Preferred Route.

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-53
Organization: Elk Song Ranch
Protester: Brad & June Allen

Issue Excerpt Text:

Between the DEIS and the FEIS the applicant revised its application and introduced an entirely new route in Morrow County. Many interested persons will not be aware of the new route, and had no opportunity to

comment on the DEIS (because the route didn't exist in the DEIS).

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-55
Organization: Confederated Tribes of the Umatilla Indian Reservation
Protester: Eric Quaempts

Issue Excerpt Text:

Because there are new alternatives in the EIS not contained in the DEIS for which the impacts were not analyzed, a Supplemental EIS is necessary to correct this deficiency.

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-57
Organization: Individual
Protester: Irene Gilbert

Issue Excerpt Text:

I am protesting the failure of BLM to meet the obligation to include the citizens of Oregon who are not Idaho Power customers in the development of the Environmental Impact Statement. This protest is based upon the following which establishes a pattern of denying Oregon citizens input opportunities as is required by NEPA: [...]

7. Including in the final EIS route changes that were never stated as being considered.

Summary:

The FEIS contains new alternatives that were not sufficiently analyzed and not included in the DEIS, violating NEPA and requiring a supplemental EIS. The public has not been allowed to comment on new routes and maps in the FEIS; therefore a supplemental EIS should be prepared.

Response:

NEPA requires agencies to prepare supplements to either a draft or final EIS if the agency makes substantial changes to the proposed action that are relevant to environmental concerns, or if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts, and requires that such a supplement be circulated for public comment unless alternative procedures are approved by the Council on Environmental Quality (40 CFR 1502.9(c)). “Substantial changes” in the proposed action relevant to environmental concerns are changes that would result in significant effects outside the range of effects analyzed in the draft or final EIS (BLM Handbook H-1790-1, p. 29). A supplemental EIS may also be required when a new alternative is added that is outside the spectrum of alternatives already analyzed and not a variation of an alternative, or a combination of alternatives already analyzed (BLM Handbook H-1790-1, p. 29).

As stated in Section 2.5.2 of the FEIS, “the alternative routes analyzed for the Final EIS include the alternative routes analyzed in the Draft EIS and the route variations resulting (1) from co-locating the alignment of the proposed transmission line closer to existing transmission lines and (2) from recommendations received in comments on the Draft EIS. The BLM took a hard look at the route variations and determined the route variations are all within the B2H Project area and, additionally, the route variations incorporated into the network of alternative routes are within the spectrum of alternatives already analyzed,” (Boardman to Hemingway FEIS/RMPAs, p. 2-110). Further, the BLM reviewed comments on the DEIS in response to the applicable regulations at 40 CFR 1502.9 and determined that a supplemental EIS is not required (Boardman to Hemingway FEIS/RMPAs, Appendix K6, p. K6-315). Although not required, the BLM notified the public of the change in the preliminary Agency Preferred Alternative via postcard and on the project website. In addition to public notification, the BLM also worked with cooperating agencies, including counties, to identify the Agency Preferred Alternative.

For the reasons set forth, the Boardman to Hemingway EIS does not require supplementation.

NEPA – Mitigation

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-40
Organization: Wildlands Defense
Protester: Katie Fite

Issue Excerpt Text:

The “mitigation” measures in Appendix E (dated years ago in 2011 in the DEIS, and now lacking a date in the FEIS but nearly the same) are greatly inadequate to protect: [...] view sheds [....]

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-40
Organization: Wildlands Defense
Protester: Katie Fite

Issue Excerpt Text:

The FEIS abandoned what was the previous mitigation foundation for sage-grouse, a Blueprint document, and came up with a very confusing completely general document that is only a plan to plan some more.

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-40
Organization: Wildlands Defense
Protester: Katie Fite

Issue Excerpt Text:

Since the necessary site-specific on the ground surveys for nearly all other TES species have not been prepared, effective mitigation and minimization cannot take place.

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-40

Organization: Wildlands Defense
Protester: Katie Fite

Issue Excerpt Text:

The BLM should start by considering the indirect effects within a standard, conservative distance from the transmission line and adjust this distance depending on the quality of the habitat adjacent to the transmission line, the topography of that habitat, the impacts to that habitat and to sage-grouse, and the specific use of that habitat by sage-grouse {lekking, nesting and brood rearing, etc). The mitigation calculations need to factor in the success rate of vegetation restoration efforts, the rate of habitat loss due to wildfire. The lag time before any actual mitigation is realized. In our determination, fence marking/modification, as described in the Habitat Equivalency Analysis, is not an appropriate form of mitigation for indirect effects related to this project.

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-40
Organization: Wildlands Defense
Protester: Katie Fite

Issue Excerpt Text:

The FEIS cannot be used as the basis for mitigation, because it fails to take a hard look at GRSG and a host of other rare species at a local population level and local landscape level.

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-40
Organization: Wildlands Defense
Protester: Katie Fite

Issue Excerpt Text:

The EIS claims it will achieve a No Net Loss of values - but it has still not properly identified the baseline to determine just what will be lost, and the magnitude of losses to local and regional populations.

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-42
Organization: Baker County Commission
Protester: Bill Harvey

Issue Excerpt Text:

The mitigation alternatives described in the FEIS do not provide relief from the impact. The impacts are also noted in the document summary, "Impacts associated with the NHOTIC facilities in Segment 3 would be highest in association with the Applicant's Proposed Action Alternative"(reference S-53), but there is no identification of a less visually impactful alternative or summary discussion of effective mitigation to lessen the impacts.

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-46
Organization: Defenders of Wildlife
Protester: Karimah Schoenhut

Issue Excerpt Text:

(3) evaluate the availability and effectiveness of compensatory mitigation for residual impacts to greater sage-grouse.

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-46
Organization: Defenders of Wildlife
Protester: Karimah Schoenhut

Issue Excerpt Text:

[T]he FEIS provides no such analysis for the compensatory mitigation measures that are intended to address that residual impact. The FEIS purports that an analysis of the actual compensatory mitigation measures that will be applied to the project's impacts, detailed in a compensatory mitigation plan, cannot be developed until after a final route is selected

and designed....

This deferral deprives the agency and the public of the information necessary to evaluate the true impacts of the Project prior to the agency's final decision on an alternative, and prior to any commitment of resources.

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-46
Organization: Defenders of Wildlife
Protester: Karimah Schoenhut

Issue Excerpt Text:

As detailed in Defenders' comments on the DEIS, see FEIS at K6-35 to K.6-39, rather than evaluate the feasibility and likely effectiveness of the compensatory mitigation measures that the Applicant plans to apply to address residual impacts to greater sage-grouse, BLM has instead provided a "framework" for compensatory mitigation plans, see FEIS at Appendix C, which basically sets out guidelines for the development of a compensatory mitigation plan, and provides a list of potential compensatory mitigation measures. Whereas avoidance and minimization measures (which are forms of mitigation) are specifically set forth in the FEIS, accompanied by an evaluation of their effectiveness, and utilized to determine the level of residual impact for each alternative remaining after their application, the FEIS provides no such analysis for the compensatory mitigation measures that are intended to address that residual impact. The FEIS purports that an analysis of the actual compensatory mitigation measures that will be applied to the project's impacts, detailed in a compensatory mitigation plan, cannot be developed until after a final route is selected and designed, see FEIS at C-1.

Problematically, this assertion only highlights the fact that the different alternative routes for the project may require very different forms of compensatory mitigation, and that not all of these forms of mitigation have the same likelihood of success or availability. Consequently, some of the alternatives may have residual impacts that are more difficult to compensate for than others, will not be addressed successfully on the same timescale, or may not feasibly be addressed at all on a

timescale that is meaningful to offsetting the impact. Given that BLM has abundant information about the alternative routes, and the potential impacts associated with each route, it is unclear why the agency cannot evaluate the extent to which the different alternative routes would require different forms of compensatory mitigation. By failing to assess the extent to which the different alternatives may require different compensatory mitigation measures, and the relative effectiveness or likely success of those measures, the FEIS obscures important differences between the actual level of harm that will remain as a result of each alternative, and the time required to address the residual harms of each alternative. These differences would inform the selection of the Agency's Preferred Alternative. The failure of the FEIS to provide this analysis to the public for comment prior to the selection of a final route violates NEPA, and renders the selection of the Agency's Preferred Alternative arbitrary and capricious.

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-46
Organization: Defenders of Wildlife
Protester: Karimah Schoenhut

Issue Excerpt Text:

BLM should require the Project applicant to present a detailed, results-based

compensatory mitigation plan. To the extent that different routes would entail different compensatory mitigation plans, the EIS should assess the differences in likely availability and effectiveness of compensatory mitigation for the alternatives. The compensatory mitigation plan(s) and BLM's assessment of the likely availability and effectiveness of compensatory mitigation measures in those plans should be made available for public comment as part of the NEPA planning process, prior to the selection of an alternative, and prior to the issuance of a Record of Decision.

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-57
Organization: Individual
Protester: Irene Gilbert

Issue Excerpt Text:

I am protesting the failure of BLM to meet the obligation to include the citizens of Oregon who are not Idaho Power customers in the development of the Environmental Impact Statement. This protest is based upon the following which establishes a pattern of denying Oregon citizens input opportunities as is required by NEPA: [...]

7. Including in the final EIS route changes that were never stated as being considered.

Summary:

The FEIS does not include sufficient detail to analyze the effectiveness of mitigation measures because:

- the BLM's mitigation plan was not made available to the public;
- the deferral of development of a mitigation plan prevents the evaluation of the true impacts of the Project prior to the BLM's selection of an alternative and commitment of resources;
- the mitigation alternatives described in the FEIS does not mitigate visual impacts to the National Historic Oregon Trail Interpretative Center (NHOTIC);
- it does not evaluate the feasibility or effectiveness of compensatory mitigation measures to address residual impacts to Greater Sage-Grouse;
- it should have assessed the differences in likely availability and effectiveness of compensatory mitigation for each of the alternatives;
- it does not require mitigation for cumulative wildlife habitat damages;
- it abandoned the previous mitigation foundation for Greater Sage-Grouse;
- the Greater Sage-Grouse mitigation proposed, such as fence marking/modification, is inadequate to address the indirect effects of this project;

- its proposed mitigation fails to consider landscape-scale mitigation strategies and take into consideration other stressors on biological resources, as required by BLM mitigation policy; and
- it does not include sufficient information to analyze the effects of the alternatives or effectiveness of mitigation.

Response:

NEPA requires the BLM to include a discussion of measures that may mitigate adverse environmental impacts (40 CFR 1502.14(f), 40 CFR 1502.16(h)). Potential forms of mitigation include: “(a) avoiding the impact altogether by not taking a certain action or parts of an action; (b) minimizing impacts by limiting the degree or magnitude of the action and its implementation; (c) rectifying the impact by repairing, rehabilitating, or restoring the affected environment; (d) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; or (e) compensating for the impact by replacing or providing substitute resources or environments” (40 CFR 1508.20). NEPA does not require identified mitigation plans to be finalized prior to the conclusion of the NEPA process. Rather NEPA requires sufficient detail about the potential content of a plan in which the effects of the measures can be disclosed and analyzed in the NEPA document. *See Western Watersheds Project*, 188 IBLA 277, 286-87 (2016).

In addition, current policies direct the BLM to avoid, minimize, and compensate for remaining unavoidable (also known as residual) impacts associated with its decisions or actions after avoidance, minimization, and rectification and reduction measures are applied. See the BLM’s interim mitigation policy (Washington Office Instruction Memorandum 2013-142) (finalized December 22, 2016 as BLM Manual MS-1794 - Mitigation and BLM Handbook H-1794). The Boardman to Hemingway FEIS/RMPAs adequately identifies and analyzes mitigation measures to address resource impacts associated with the proposed plan amendment and transmission line. Early in the project, land use plans and other documents relevant to the project were reviewed to identify best management practices and other measures that mitigate potential impacts and were compiled from multiple sources into a comprehensive list (Boardman to Hemingway FEIS/RMPAs, Section 2.3.4). Comments on the Draft EIS included a criticism that reviewers had difficulty discerning where impacts would occur, how and where impacts would be mitigated, and the relative effectiveness of the measures. In response to those comments, the BLM further refined the measures into two types. One type comprises measures the Applicant would implement as standard practice of construction, operation, and/or maintenance, as applicable, referred to as design features of the project for environmental protection. These environmental design features are part of the Applicant’s project description, and are listed in Table 2-7 of the FEIS. The other type comprises measures that the Applicant has committed to apply to certain areas through the planning process to avoid, reduce, or minimize impacts of the B2H Project. The selective mitigation measures are described in FEIS Section 2.5.1.1. Both types of design features represent avoidance and minimization measures, which represent the first two steps in the mitigation hierarchy.

Chapter 3 of the FEIS evaluates the impacts of the Proposed Action and alternatives with the design features applied, and identifies the residual impacts after these measures are applied. The FEIS provides clear procedures for the development and application of compensatory mitigation measures.

As the name suggests, the Compensatory Mitigation Framework is intended to be a detailed framework, not a site-specific mitigation plans, to discuss how direct and indirect impacts for the B2H Project were identified. The Compensatory Mitigation Framework (1) establishes the process through which the impacts will be assessed; (2) establishes how avoidance and minimization have eliminated and/or reduced impacts; and (3) identifies unavoidable impacts to be addressed for which a list of compensatory mitigation could be applied in specific areas to offset the remaining residual impacts.

Upon selection of the final route in the Record of Decision and following final engineering and design, the Compensatory Mitigation Framework will be used to prepare a Compensatory Mitigation Plan. The compensatory mitigation plan will quantify the direct and indirect impacts based on a final engineered and designed alignment, and identify a suite of site-specific compensatory mitigation options for selection and implementation under the review and guidance of the cooperating agencies. A final detailed compensatory mitigation plan must be reviewed by the cooperating agencies and a recommendation will be made to the Authorized Officer for approval prior to any issuance of Notices to Proceed.

The public has had the opportunity to review and comment on the Mitigation Framework, and the effects of the Proposed Plan Amendment, as mitigated by the framework, were fully analyzed in the FEIS.

The Mitigation Framework includes standards that compensatory mitigation will be required to meet, such as the net conservation gain required for Greater Sage-Grouse mitigation. See, for example, FEIS Appendix C, page C-27, which requires that compensatory mitigation projects for Greater Sage-Grouse will demonstrate that mitigation projects are “[a]vailable and on a scale that is meaningful to conservation; [r]easonably certain to be initiated within the time frames established through the federal and state permitting process, [and] [m]utually agreed upon by B2H Project Applicant and agencies.”

The Mitigation Framework includes a requirement that the mitigation plans (called “CMP” in the Framework) developed under the framework “identify and provide protocols to ensure that mitigation measures are monitored to either (1) verify that the required outcomes are being achieved or (2) ensure that specific adaptive management requirements are implemented or both. The CMP will identify the type, extent, and duration of effectiveness monitoring for mitigation measures, as guided by the degree of uncertainty associated with a mitigation measure, the amount and type of the mitigation measure, and the potential need for adaptive management” (Boardman to Hemingway FEIS/RMPAs, Appendix C, C-10 to C-11).

Upon identification of any selected route in the ROD and following final engineering and design, a CMP will be developed to quantify the direct and indirect impacts based on an engineered and designed alignment and to identify a suite of site-specific compensatory mitigation options for selection and implementation under the review and guidance of the cooperating agencies. That is, a final detailed compensatory mitigation plan must be reviewed by the cooperating agencies and a recommendation will be made to the authorized officer for approval prior to any issuance of any notice to proceed for surface-disturbing activities associated with the Project. This provides adequate assurances that such mitigation will meet the standards developed in the Mitigation Framework.

The NHOTIC is identified as a federal protective component in the Mitigation Framework Plan (Boardman to Hemingway FEIS/RMPAs, Appendix C, p. C-39). The mitigation plans designed under the Mitigation Framework will identify the level of residual impacts on federal protection components (National Trail Management Components) and the level of compensatory mitigation identified to be commensurate with the adverse impacts identified in the Final EIS. Because the BLM decided that visual resource management did not meet the threshold for this particular compensatory mitigation level, it was not considered in this analysis. The VRM conclusions reached are directly related to the overall nature and purpose of the trail, per BLM Manual 6280.

With regards to mitigation for general wildlife habitat, the BLM determined that wildlife species, with the exception of Greater Sage-Grouse, did not warrant compensatory mitigation. The analysis supporting this determination is found in Section 3.2.4 of the FEIS. Appendix C of the FEIS explains that the BLM identified the potential impacts that could remain after application of the avoidance, minimization, and rectification/restoration measures. Following this evaluation, the BLM determined which resources did not have residual impacts that warranted compensatory mitigation. In general, the BLM determined that the Boardman to Hemingway FEIS/RMPAs nature and extent of predicted remaining unavoidable impacts on these resources identified through the NEPA process indicate that the effects would be minor, localized, or temporary and not affect important, scarce, or sensitive resources, and therefore, do not warrant compensatory mitigation. Also, the residual impacts would not inhibit achieving BLM land-use plan objectives or compliance with laws, regulations, and/or policies. Finally, residual impacts related to the resource indicators for these resources have not been identified previously by the BLM in a project- or program-specific mitigation strategy in the study area for the Agency Preferred Alternative as warranting compensatory mitigation. Thorough rationale for whether compensatory mitigation is warranted for any resource or value is documented in the mitigation strategy tables included in the project record. The mitigation strategy tables outline the avoidance, minimization, and rectification measures for each resource, and evaluate whether compensatory mitigation is warranted.

The Greater Sage-Grouse Mitigation Blueprint (DEIS Appendix E) was not included in the Final EIS. This appendix was intended to be used as a placeholder while the BLM finalized its Greater Sage-Grouse Approved Resource Management Plan Amendments (ARMPAs) for Oregon and Idaho. The Greater Sage-Grouse Mitigation Framework was refined for the FEIS to provide additional information about BLM's requirements and recommendations for compensatory mitigation. The FEIS was also revised to include additional discussion of the effectiveness of mitigation measures in reducing impacts on Greater Sage-Grouse, including Applicant committed design features and site-specific conservation measures that are similar to those included in the ARMPAs. The BLM will require a hierarchy for mitigation that will achieve a net conservation gain (Boardman to Hemingway FEIS/RMPAs, Appendix C, page C-22).

The glossary in Appendix C defines net gain as "When mitigation results in an improvement to baseline conditions". As described in Section C.2.2.1 in Appendix C, the amount of compensatory mitigation required for Greater Sage-Grouse will be measured using the Oregon Sage-Grouse Habitat Quantification Tool (HQT). The HQT will be used to calculate both B2H Project impacts (debits) and the measures proposed to compensate for those impacts (credits). Using the HQT to calculate both debits and credits will allow estimates of the habitat functions and values of a given location on the landscape using reliable and repeatable methods resulting in a "common currency"

between credits and debits that will apply equally across all land ownerships. Net conservation gain is achieved when the amount of credits exceeds the amount of debits.

The Mitigation Framework requires the mitigation plans to consider baseline conditions and reasonably foreseeable impacts, including impacts that extend beyond the BLM's administrative boundaries, in the context of the conditions and trends of resources, at appropriate scales (i.e., appropriate landscape-scale approach). The appropriate landscape-scale approach also allows for identification of the most appropriate combination of mitigation measures across the appropriate scales (Boardman to Hemingway FEIS/RMPAs, Appendix C, page C-7). This approach complies with BLM policy on landscape-scale mitigation (BLM Manual 1794 and BLM Manual Handbook 1794-1 dated December 22, 2016).

In response to comments on the DEIS stating that not enough information was provided in the Draft EIS to enable the reviewers to understand where impacts would occur and where mitigation would be applied to reduce impacts, the BLM made changes to the FEIS. Chapter 2, Section 2.5.1 of the FEIS presented an explanation of the study and analysis approach employed for the B2H Project, Chapter 3 was expanded to provide more description of the methods for used for analyzing effects associated with each resource (tiered to the overall approach) and to provide more information about the resources, mitigation applied to reduce impacts, and residual impacts on resources along each alternative route by segment. In short, the BLM identified adequate mitigation measures to address the impacts to resources, including Greater Sage-Grouse, and considered the anticipated effectiveness of such measures as required under NEPA. Additionally, the mitigation plans to capture and require compensatory mitigation also satisfy NEPA's requirements.

Lands with Wilderness Characteristics

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-45
Organization: Oregon Natural Desert Association
Protester: Dan Morse, et. al.

Issue Excerpt Text:

BLM's finding that Pinnacle Point fails to provide outstanding opportunities for primitive recreation due to the use of motorized vehicles to support fishing opportunities is an incorrect application of the primitive recreation standard; the unit clearly possesses all of the recreation characteristics of an LWC unit.

If, in fact, BLM has not yet completed its LWC inventory update for the SEORMP planning area, BLM must analyze and disclose the effects of any proposed alignment of the B2H Project crossing a unit identified in ONDA's citizen inventory reports as having wilderness character. And if the B2H Project would diminish the size or cause the entire ONDA inventory unit to no longer meet the criteria for wilderness character, then BLM is precluded from approving any surface-disturbing activity in that unit. The FEIS must provide additional disclosure; analysis, and information about the LWC inventory and ensure conformance with the Settlement Agreement.

Summary:

The BLM incorrectly applied the primitive recreation standard to an area that possessed wilderness characteristics. The BLM has also not completed a wilderness characteristics inventory update for the Southeast Oregon Resource Management Plan planning area. The BLM also did not analyze effects on an area found to have wilderness characteristics in a publically submitted wilderness inventory.

Response:

Section 201(a) of FLPMA requires that the BLM "prepare and maintain on a continuing basis an inventory of all public lands and their resources and other values" and that "this inventory shall be kept current so as to reflect changes in conditions and to identify new and emerging resource and other values."

Section 202(c)(4) of FLPMA requires that "in the development and revision of land use plans, the Secretary shall...rely, to the extent it is available, on the inventory of the public lands, their resources, and other values."

The BLM's wilderness characteristics inventory process does not require that the BLM must conduct a completely new inventory and disregard the inventory information that it already has for a particular area when preparing a land use plan (BLM Manual Section 6310.06.B).

The BLM relied on a current inventory of the resources of the public lands when preparing the Boardman to Hemingway FEIS. The BLM completed an inventory update for the units in question during the 2007-2012 Vale District-wide update. The Vale BLM inventory is considered to be current and meets the requirements of Section 201 of FLPMA. The BLM described the inventory information it used for Lands with Wilderness Character in Section 3.2.10 of the Boardman to Hemingway FEIS.

As described in Section 3.2.10.5, the BLM has reviewed ONDA's citizen wilderness proposals to determine if the information is substantially different from the information included in the inventory and described in the Boardman to Hemingway FEIS. The section of the FEIS describes on a proposal-by-proposal basis where the BLM disagreed with ONDA's proposals.

The BLM is reviewing inventory updates for completeness in the Southeast Oregon RMP area for relevancy to a formal inventory consistency evaluation conducted in 2015. The evaluation identified issues to be considered in subsequent inventory updates, and specifically assessed the inventory report for the Deer Butte unit (OR-036-053). A review of that report has found that the issues merely constitute documentation errors that do not warrant reconsideration of the prior conclusion that the area does not meet minimum wilderness criteria. The current report thoroughly analyzes and documents disagreement with the ONDA inventory and provides sufficient rationale for the finding that the area lacks wilderness characteristics.

As required by FLPMA, the BLM relied on its current inventory of the public lands, to the extent it was available, in developing the Boardman to Hemingway FEIS and reviewed the citizen wilderness proposals. The BLM followed the requirements in Manual 6310 in determining that the units do not possess outstanding opportunities for solitude or a primitive and unconfined recreation due to the presence of motorized use in the units.

Coordination and Cooperation

Issue Number: PP-OR-BOARDMANHEMINGWAY-16-42
Organization: Baker County Commission
Protester: Bill Harvey

Issue Excerpt Text:
On May 20, 2005 David Henderson, BLM

Vale District Manager signed an MOU with Baker County agreeing to coordinate all planning efforts with Baker County. This agreement was breached in that the FEIS fails to have the review and approval of the NHOTIC of the “Flagstaff Alternative” included in the document.

Summary:

The BLM violated its Memorandum of Agreement (MOU) with Baker County in not allowing review and approval of the “Flagstaff Alternative”.

Response:

Baker County, Oregon was a cooperating agency on the Boardman to Hemingway Transmission Line Project FEIS and Associated Resource Management Plans and participated with the BLM in the review and development of the FEIS, which includes the Agency Preferred Alternative.

Such participation included workshops between the draft and final EIS, as well as focused meetings to further refine the Agency Preferred Alternative. Because of this ongoing coordination, the BLM believes that the intent of the MOU was satisfied.
